

EXHIBIT A

BAKER & MCKENZIE

Baker & McKenzie Ltd.
Attorneys at Law

5th Floor and 21st-25th Floors
990 Abdulrahim Place
Rama IV Road, Silom, Bangrak
Bangkok 10500
Thailand

Tel: +66 2636 2000
Fax: +66 2636 2111
bangkok.info@bakermckenzie.com
www.bakermckenzie.com

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** In cooperation with
Trench, Rossi e Watanabe
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Certificate of Accuracy of Translated Document

1. I am an employee of Baker & McKenzie, Ltd., in Bangkok, Thailand. My job title is translator, and my job responsibility is to translate documents from Thai to English and English to Thai.
2. My education background is Bachelor's Degree in English language and literature, and graduate diploma in English-Thai translation from Thammasat University, Thailand. I am fluent in both written and spoken Thai and English.
3. I was asked to prepare English translation of Supreme Court Judgment No. 7457/2550, dated November 14, 2007, which was originally written in Thai.
4. I make this statement to certify that the English translation of the Court Judgment identified above that is attached hereto is, to the best of my knowledge and belief, a true, accurate and complete translation into the English language.
5. By my signature below, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: August 11, 2016



(Suporn Pongpujaneegul)

(Translation)

(Garuda Emblem)

(31 bis)
Judgment

For Court Use

In the Name of His Majesty the King

Ref. No. 7457/2550

Supreme Court

14 November 2007

Criminal case and civil case in relation to the criminal case

between

Tsuburaya Productions Co., Ltd

Plaintiff

vs.

Tsuburaya Chaiyo Co., Ltd, No. 1

Mr. Sompote Saengduenchai, No. 2

Mr. Peerasit Saengduenchai, No. 3

Book Athens Distribution Co., Ltd, No. 4

Defendants

Re: Offense against the Copyright Act; offenses against competent officers, intellectual property and copyrights

The Plaintiff and the four Defendants appealed against the verdict delivered by the Central Intellectual Property and International Trade Court (the "**Central IP & IT Court**") dated 4 April 2000. The Supreme Court accepted the appeals on 24 August 2001.

The Plaintiff filed a charge and amended its complaint as follows. The Plaintiff is a juristic person incorporated as a limited company under the laws of Japan whose objectives are to produce and distribute cinema and television movies, and to engage in other related businesses. Defendant No. 1 is a juristic person incorporated as a

limited company at the Phranakorn Sri Ayutthaya Provincial Partnerships and Companies Registration Office. Defendants No. 2 and No. 3 are authorized directors who act on behalf of Defendant No. 1. Defendant No. 4 is a juristic person incorporated as a limited company at the Bangkok Partnerships and Companies Registration Office. The Plaintiff invented and created work called Ultra Q movie in 1965. It also created movies and applied art in a form of a human-like character named Ultraman or "Yod Manut" (in Thai). In 1966, the Plaintiff created numerous literary and artistic works which can be classified as paintings, prints, photos and applied arts, called Ultraman or "Yod Manut" series. These works are in the forms of human-like characters of the same family as Ultraman. They included "Father of Ultra", "Ultraman Zoffy", "Ultra Seven", "Ultra Seven 21", "Ultraman Jack", "Ultraman Ace", "Ultraman Taro", "Ultraman Leo", "Astra", "The Ultraman", "Ultraman Joe", "Ultraman 80", "Ultraman: Towards the Future", "Ultraman Great", "Ultraman: the Ultimate Hero", "Ultraman Powers", "Ultraman Tiga", "Ultraman: the Adventure Begins", "Ultraman USA", "Ultraman Neos" and "Ultraman Zearth" as well as the Ultraman movie series, and the portraits, paintings and photos of all the Ultraman characters in various postures. The Plaintiff has created various types of works involving these characters from 1965 up to the present day. The work was released for the first time in Japan in 1966 and subsequently in later years in Japan. To elaborate, "Ultra Q" and "Ultraman" movies were produced in 1965 and 1966, respectively. They were released for the first time in 1966. "Ultra Seven" movie was produced and advertised for the first time in 1967. "Return of Ultraman" movie was first produced and advertised in 1971, while "Ultraman Ace" and "Jamborg Ace" movies were produced and advertised for the first time in 1972. "Ultraman Taro" movie was produced and advertised for the first time in 1973. "Ultraman Leo" was first produced and advertised a year later in 1974. "Ultraman 80" movie was made and advertised for the first time in 1980. "Ultraman Zoffy", "Ultraman: The Adventure Begins", "Ultraman: Towards the Future", "Ultraman: The Ultimate Hero", "Ultraman Zearth" and "Ultraman Tiga" movies were first made and first advertised in 1984, 1987, 1990, 1993, 1996 and 1996, respectively. As a result, these literary and artistic works called Ultraman and the Ultraman series are copyrighted works belonging to the Plaintiff according to the laws of Japan, and are protected under the copyright law of Thailand according to the Copyright Act, B.E 2537 (1994) as Thailand and Japan are both members of the copyright protection convention; namely,

the Berne Convention for the Protection of Literary and Artistic Works according to the Ministry of Commerce's Notification dated 15 May 1996 *Re: List of countries which are members of the copyright protection convention or the performer's right protection convention* announced in the Government Gazette, Volume 113, Special Section 16 Ngor, pages 1-12. The Plaintiff also registered the wording "Ultraman" (Ultraman or "Yod Manut" in Thai) trademark with the Patent and Trademark Office in Japan in 1967, as well as the trademarks of Ultraman or "Yod Manut" characters in various postures . Around May 1996, Defendants No. 2 and No. 3 met with the Plaintiff in Tokyo, Japan. Defendant No. 2 claimed that he, as chairman of Chaiyo Film Co., Ltd, agreed to sign a Licensing Agreement with Tsuburaya Prod. Enterprise Co., Ltd. by Mr. Noboru Tsuburaya on 4 March 1976 (B.E 2519). According to the Agreement, Tsuburaya Prod. Enterprise Co., Ltd. granted the rights to Defendant No. 2, who was chairman of Chaiyo Film Co., Ltd., so that he became the sole person to distribute, produce and reproduce, and to have copyrights, trademark rights and broadcasting rights over every territory except Japan in, the "Giant and Jumbo A", "Hanuman and the Seven Ultraman", "Ultraman 1 (Ultra Q)", "Ultraman 2", "Ultraman Seven", "Return Ultraman", "Ultraman Ace", "Ultraman Taro" and "Jamborg Ace" movies, which are the Plaintiff's copyright works. Defendants No. 2 and No. 3 only showed the Agreement to the Plaintiff for the first time after Mr. Noboru Tsuburaya's death and 20 years after the signing date of the Agreement. In addition, Defendants No. 2 and No. 3 fraudulently persuaded the Plaintiff to sign a letter dated 23 July 1996 to confirm that Defendant No. 2 had the sole right to do anything according to the Licensing Agreement. The Plaintiff learned only later that Mr. Noboru Tsuburaya's signature in the Agreement was not genuine. In addition, there were several suspicious details in the Agreement that led to a belief that Mr. Noboru Tsuburaya had never granted any right to Defendant No. 2, Defendant No. 3 and Chaiyo Film Co., Ltd. based on the Licensing Agreement as Defendants No. 2 and No. 3 had claimed. Defendant No. 2 and No. 3's claims were all false. No matter how the case is viewed, the party in the Licensing Agreement was not the Plaintiff, who is the copyright owner. As a result, Defendant No. 2 shall have no right to the Plaintiff's copyright works. The Plaintiff eventually authorized its attorney to issue a clarification letter to Defendant No. 2 and asked Defendant No. 2 to stop using or claiming the Plaintiff's rights.

The four Defendants had committed various criminal offenses considered violating the Plaintiff's copyrights on various occasions as follows.

(1) From 11 September 1996 to 16 December 1997, which was the day the suit was filed, on unspecified dates during the day and night time and within a period of time wherein the Plaintiff's copyrighted works under the complaint remained protected under the laws, the four Defendants collaborated to reproduce and modify the various pictures of Ultraman characters, which were the Plaintiff's copyrighted, artistic works, consisting of "Ultraman", "Father of Ultra", "Ultra Seven", "Ultraman Jack (Return of Ultraman)", "Ultraman Ace", "Ultraman Taro", "Ultraman Leo", "The Ultraman", "Ultraman 80", "Ultraman Towards the Future", "Ultraman: The Ultimate Hero", "Ultraman Tiga", "Ultraman Zearth", "Ultraman Zoffy" and "Astra" in the Ultraman movie series". Several Ultraman characters that were so reproduced and modified were also reproduced in coloring books. The books' front, back and inside cover contained reproduced and modified Ultraman characters. These books were produced for commercial purposes, even though the four Defendants had neither legal power to do so nor were permitted by the Plaintiff. Details in the coloring books named Defendant No. 1 as a copyright owner and Defendant No. 4 as the publisher. The incident took place at Thanon Phraya Thai Subdistrict, Ratchathevi District, Bangkok.

(2) From 20 October 1996 to 16 December 1997, which was the day the suit was filed, on unspecified dates during the day and night time and within a period of time wherein the Plaintiff's copyrighted works under the complaint remained protected under the laws, the four Defendants, having known that the coloring books they had made were infringing the Plaintiff's copyrights, collaborated to publish the books for commercial purposes and for their own benefit. In the inside cover of the books, Defendant No. 1 was declared a copyright owner of Ultraman or "Yod Manut" and Defendant No. 4 was licensed to solely sell, offer to sell or distribute the books in Thailand. The books were released for sale, or were possessed for sale, to the public in Thailand and abroad, although the four Defendants had no legitimate rights to do so; nor were they permitted by the Plaintiff. The incident took place at Thanon Phraya Thai Subdistrict, Ratchathevi District, Bangkok, and at other subdistricts and districts of Bangkok and other

provinces nationwide where the coloring books were sold, offered for sale, or distributed.

- (3) From 1 July 1997 to December 1997 on unspecified dates during the day and night time, Defendant No. 2 and Defendant No. 3 filed several complaints with the Economic Crime Investigation Division at Bangrak District, Bangkok, with a statement they knew was false, that Defendant No. 2 was the sole copyright owner of the Ultraman or "Yod Manut" works. The purpose of such complaints was to arrest and demand benefits or damages from those selling or offering to sell merchandise with Ultraman photos or characters, even though Defendant No. 2 did not own or have any right to the copyrighted works of Ultraman or "Yod Manut."
- (4) During the night time of 4 June 1997, Defendant No. 2 filed a statement that he knew was false with the Economic Crime Investigation Division, Bangrak District, Bangkok, that Defendant No. 2 was the sole copyright owner and licensee of the Ultraman or "Yod Manut" copyrighted works, with a purpose to arrest and demand benefits or damages from those selling or offering to sell merchandise with Ultraman photos or characters, although Defendant No. 2 did not own or have any rights in the copyrighted works of Ultraman or "Yod Manut."
- (5) During the daytime of 11 June 1997, Defendant No. 2 and Defendant No. 3 filed a statement that they knew was false with the Economic Crime Investigation Division, Bangrak District, Bangkok, that Defendant No. 2 was the sole copyright owner and licensee of the Ultraman or "Yod Manut" copyrighted works, with a purpose to arrest and demand benefits or damages from those selling or offering to sell merchandise with Ultraman photos or characters, despite the fact that Defendant No. 2 did not own or have any rights in the copyrighted works of Ultraman or "Yod Manut." The incidents stated under (3), (4) and (5) took place at Silom Subdistrict, Bangrak District, Bangkok.

In addition, from around the end of 1996 up to the present day, Defendant No. 2 has asked the Plaintiff's licensees who legally have the right to sell, distribute and disseminate movies and products or materials with Ultraman or "Yod Manut" pictures

in Taiwan, Malaysia, Hong Kong SAR, Singapore and Bangkok, to stop producing, selling and distributing and to destroy photos or materials containing photos of Ultraman or "Yod Manut." This made the Plaintiff's licensees very confused. The Plaintiff had to spend money and time in clarifying the situation with these licensees while losing a lot of income. In mid 1996, Defendant No. 2 claimed that he was the copyright owner of "Ultraman A", "Ultraman", "Ultraman Seven", "Ultraman Taro", "Ultraman Zoffy", "Ultraman Jack" and "Jamborg Ace"; and that he had entrusted another person as a sole representative in Thailand to find licensees to produce Ultraman products for sale and distribution through videos, terrestrial TV and cable TV, and to sign a licensing agreement to make videos for a commercial purpose. Defendant No. 2 claimed that he was a copyright owner of the Plaintiff's "Yod Manut" or Ultraman movies. He claimed that he had advised other persons to make videos from the movies for commercial purposes in Thailand, and to seek commercial benefits therefrom by way of sale or rent without any limited production, as well as by way of broadcasting on TV Channels 3, 5, 7, 9, and 11, from which Defendant No. 2 earned Baht 2.38 million. He also licensed the Plaintiff's Ultraman or "Yod Manut" characters to CP 7-Eleven (Thailand) Co., Ltd.

The four Defendants' actions are considered both criminal and civil offenses which have caused the Plaintiff to suffer.

Before filing the charge in this case, the Plaintiff had already notified the four Defendants to stop all actions that infringed the Plaintiff's copyrights, but these requests were ignored. The Plaintiff requested that the Court enforce the relevant laws and punish the four Defendants as follows.

- (1) The four Defendants shall be punished according to the Copyright Act, B.E 2537 (1994), sections 4, 6, 8, 15, 19, 27, 31, 61, 69, 70, 74, 75 and 76; and the Penal Code, sections 83, 91 and 137.
- (2) The four Defendants shall be prohibited from claiming that they are copyright owner or a sole licensee of the Ultraman or "Yod Manut" copyrights as stated in the complaint. The Defendants shall also be prohibited from signing any

further agreements for licensing or granting copyrights of the Ultraman or "Yod Manut" characters to other persons.

(3) All third-party agreements or commitments that Defendant No. 1 and Defendant No. 2 made shall be revoked.

(4) The four Defendants shall jointly compensate the Plaintiff as follows:

4.1 The Defendants must pay Baht 60 million (sixty million baht) damages as the Plaintiff was deprived of its income from the sale of copyrights or licensing rights. In addition, the Defendants must pay interest of 7.5 percent per annum on such amount from the day the suit was filed until all four Defendants have duly paid the Plaintiff.

4.2 The Defendants must also pay Baht 5 million (five million baht) damages a month from the day the suit was filed until the four Defendants stop violating the Plaintiff's copyrights.

(5) Defendant No. 2 is additionally liable to pay another Baht 30 million (thirty million baht) in damages and loss of profits to the Plaintiff due to additional violations, aside from those stated in clause 4.1, together with interest of 7.5 percent per annum on such amount from the date the suit was filed to the date Defendant No. 2 fully pays the Plaintiff.

(6) Defendant No. 3 is additionally liable to pay another Baht 10 million (ten million baht) in damages and loss of profits to the Plaintiff due to additional violations, aside from those stated in clause 4.1, together with interest of 7.5 percent per annum of such amount from the date the suit was filed to the date Defendant No. 3 fully pays the Plaintiff.

(7) All infringing goods and products owned by the Defendants shall belong to the Plaintiff.

- (8) The four Defendants shall pay half of the fine as stated in the Court's verdict on a charge of copyrights violation to the Plaintiff.
- (9) The four Defendants shall jointly compensate the Plaintiff for all the Court's costs and lawyer's fees at the maximum rate.
- (10) The Court shall rule that the Licensing Agreement Defendant No. 2 claimed that he had entered with Tsuburaya Prod. Enterprise Co., Ltd. dated 4 March 1976 is a forged document; therefore, it has no legal effect. The four Defendants shall be prohibited from claiming rights under or using the forged document.
- (11) The Court shall annul the letter the Plaintiff issued to Defendant No. 2 dated 23 July 1996 and render it unenforceable while prohibiting the four Defendants from claiming rights under or using the document.
- (12) The Court shall rule that the Plaintiff is the sole copyright owner of the various Ultraman characters as specified in the complaint. Defendants No. 1 and No. 2 shall be prohibited from claiming any rights to the Plaintiff's Ultraman works.

Having conducted a preliminary examination, the Central IP & IT Court found that the Plaintiff's case had enough grounds and therefore accepted to charge the four Defendants in a criminal case. The four Defendants were asked to submit their answers in a civil case.

Defendant No. 1 and Defendant No. 2 denied the Plaintiff's charge in the criminal case. Both, when answering in the civil case and filing amended answers and a counterclaim, denied all the claims filed by the Plaintiff, claiming that the Plaintiff had filed a false statement against them. Defendant No. 2 had collaborated with the Plaintiff to create Ultraman or "Yod Manut" products from the very beginning. On 4 March 1976, the Plaintiff, by Tsuburaya Enterprise Co., Ltd. who was the Plaintiff's business representative, executed an agreement to transfer all the rights related and incidental to the Ultraman works to Defendant No. 2 in return for

benefits fully received from Defendant No. 2 as agreed. The agreement licensed the rights to Defendant No. 2 from the signing date for an indefinite period and for all territories around the world except Japan. The Plaintiff no longer had any rights to the protection in Thailand. The Plaintiff therefore had no rights to file the case. Mr. Eiji Tsuburaya was the Plaintiff's founder and the co-creator of Ultraman or "Yod Manut" with Defendant No. 2 in Japan in 1966. They jointly produced and released movies, literary, artistic, applied art and other works relating and incidental to Ultraman in Japan and other countries. After Mr. Eiji Tsuburaya, the Plaintiff's chairman, passed away, Mr. Hajime Tsuburaya, his eldest son, succeeded him until he too passed away. Then, Mr. Noboru Tsuburaya, his second son, became the Plaintiff's chairman. On 4 March 1976, the Plaintiff by Mr. Noboru Tsuburaya, who at the time was chairman acting on behalf of the Plaintiff, and Tsuburaya Enterprise Co., Ltd., which was the Plaintiff's business representative, signed the Agreement transferring all the rights relating and incidental to the Ultraman works to Defendant No. 2 in return for all benefits from Defendant No. 2 as agreed. The agreement gave all the existing rights to Defendant No. 2, from the signing date for an indefinite period, and for all territories around the world, except Japan. After that, Defendant No. 2 distributed the Ultraman works on a commercial basis in Thailand. He also reserved his rights and registered his copyrights according to the Copyright Act, B.E 2537 (1994), and also protected his rights by charging infringers in Thailand. In 1995, Defendant No. 2 learned that Video Square Co., Ltd. in Thailand had violated his Ultraman copyrights, leading him to notify that firm to stop the infringement. However, he was informed instead that the firm was a licensee of Ultracom Inc. in the USA. Defendant No. 2 therefore assigned his lawyer to notify Ultracom Inc. that it was he who had the right to Ultraman, and Ultracom Inc. was asked to stop licensing Ultraman works, as well as pay him damages, or Ultracom Inc. would be sued. Subsequently, the Plaintiff informed Defendant No. 2 that Ultracom Inc. was in fact its subsidiary and its business representative, and asked to discuss this matter. The Plaintiff's representative went to meet Defendant No. 2 and checked evidence relating to the licensing of Ultraman works, and admitted that Defendant No. 2 indeed had the rights to Ultraman works as appeared in the Agreement. The Plaintiff also asked Defendant No. 2 not to file a charge against Ultracom Inc. and other clients who had already been licensed by the Plaintiff as a result of this

misunderstanding. This was because the Plaintiff's board who had granted licenses to other parties, did not know about the Agreement. To show its innocence, the Plaintiff would shut down Ultracom Inc. in the USA, issue a letter of apology, and confirm Defendant No. 2's rights. The Plaintiff would later on collaborate with Defendant No. 2 when negotiating an Ultraman deal. However, after Defendant No. 2 and the Plaintiff discussed a deal together in relation to Ultraman, the discussion failed, since the two parties were unable to reach an agreement on benefit-sharing. The Plaintiff by Mr. Kazuo Tsuburaya, the Plaintiff's current chairman and authorized person, informed Defendant No. 2 in writing that the Plaintiff had found some suspicious details in Defendant No. 2's licensing agreement, which indicated that Defendant No. 2 had no rights thereunder. Defendant No. 2 was asked to accept an offer made by the Plaintiff during the deal but Defendant No. 2 refused, and that is why the Plaintiff sued him in this case. As Defendant No. 2 licensed Defendants No. 1 and No. 3 to distribute the Ultraman works, Defendants No. 1, No. 2 and No. 3 did not commit any offense, as claimed by the Plaintiff. The Plaintiff was not an injured party, nor did the Plaintiff suffer any damages as filed in the lawsuit. The Plaintiff's request, attached to the complaint, requiring Defendants No. 1 and No. 2 to stop infringing its copyrights was therefore unenforceable against Defendant No. 1 and Defendant No. 2. The Plaintiff's request that the Court terminate any agreements or commitments that Defendant No. 1 and No. 2 had had with third parties in relation to the Ultraman or "Yod Manut" characters in various postures as they infringed the Plaintiff's copyrights was not lawful, because the request affected the third parties and therefore was not applicable. The Plaintiff's another request that Defendants No. 1 and No. 2 compensate it due to loss of income from selling the copyrights or licensing the rights to others and loss of benefits as a result of their infringement was incorrect, because the Plaintiff suffered no damage since it was incorporated in Japan and had neither an office nor a representative in Thailand. The Plaintiff had never conducted any commercial transaction in Thailand before. The Plaintiff's request, attached to the complaint, for the Court to rule that the Licensing Agreement Defendant No. 2 claimed that it had signed with Tsuburaya Prod. Enterprise Co., Ltd. dated 4 March 1976, was a forged document and therefore shall have no legal effect, and that the four Defendants shall be prohibited from claiming rights under or using the forged document, shall have no

effect on Defendants No. 1 and No. 2, either. This was because Defendant No. 2 had never claimed that it had signed a licensing agreement dated 4 March 1976 with Tsuburaya Prod. Enterprise Co., Ltd. What Defendants No. 1 and No. 2 had defended all along was that Defendant No. 2 had signed an agreement for rights transfer dated 4 March 1976 with the Plaintiff and Tsuburaya Enterprise Co., Ltd., the Plaintiff's business representative. The Agreement was considered valid and therefore shall have a binding effect on the Plaintiff. Defendants No. 1 and No. 2 therefore had a right to claim and use any rights in that document. The Plaintiff's request that the Court kindly rule that the letter it had issued to Defendant No. 2 dated 23 July 1996 was invalid and unenforceable, and that the four Defendants shall be prohibited from claiming any rights in or using such forged document, was not lawful either. Based on the complaint, the Plaintiff claimed that the four Defendants jointly committed infringement by producing coloring books which contained Ultraman or "Yod Manut" photos, and filed a false statement with the inquiry officers. The extent of such request was therefore far beyond the claim the Plaintiff had made in the complaint and was unenforceable. Besides, this was the letter the Plaintiff had voluntarily issued to Defendant No. 2. The document therefore was genuine and not forged. Defendants No. 1 and No. 2 shall have a right to legally claim and exercise the rights stated therein. The Plaintiff was in breach of the agreement for rights transfer signed with Defendant No. 2 dated 4 March 1976. The Plaintiff also intentionally violated Defendants No. 1 and No. 2's rights, so that both suffered damages. To elaborate, the Plaintiff was well aware that it had no rights to the Ultraman works in Thailand and around the world except Japan. Still, the Plaintiff intentionally licensed or granted the rights in the Ultraman works to others in Thailand and elsewhere, except Japan, in return for commercial benefits. The Plaintiff intentionally claimed that it had the exclusive rights to the Ultraman works in Thailand, and even filed this case so that Defendants No. 1 and No. 2 would suffer. The Plaintiff therefore must be liable for damages, and the Court was requested to dismiss the case and enforce the Plaintiff as follows:

- (1) The Plaintiff shall pay Baht 27,765,000 (twenty-seven million, seven hundred sixty-five thousand baht) as damages because Defendants No. 1 and No. 2 could not conduct business in relation to the Ultraman rights, which included

the licensing fees for terrestrial TV, videos and cable TV and other licensing fees in Thailand, after the Plaintiff filed a charge and openly stated to the public that it had the exclusive rights in such works. The Plaintiff must also pay interest of 7.5 percent per annum on this amount from the date the case was filed until all payments were made.

- (2) The Plaintiff shall pay Baht 231,063,250 (two hundred thirty-one million, sixty-three thousand, two hundred fifty baht) as damages because Defendants No. 1 and No. 2 could not conduct business in relation to the Ultraman rights, which included the licensing fees for terrestrial TV, videos and cable TV and other licensing fees in other countries except Japan and Thailand, after the Plaintiff filed a charge and openly stated to the public that it had the exclusive rights in such works. The Plaintiff must also pay interest of 7.5 percent per annum on this amount from the date the case was filed until all payments were made.
- (3) The Plaintiff shall pay Baht 365 million (three hundred sixty-five million baht) as damages because the Plaintiff breached the agreement by illegally seeking benefits from Defendant No. 2's rights to the Ultraman works. The Plaintiff had licensed others to enjoy the Ultraman works in Thailand in return for benefits, without Defendant No. 2's permission. The Plaintiff must also pay interest of 7.5 percent per annum on this amount from the date the case was filed until all payments were made.
- (4) The Plaintiff shall pay Baht 1,095,000,000 (one billion, ninety-five million baht) as damages because the Plaintiff breached the agreement by illegally seeking benefits from Defendant No. 2's rights in the Ultraman works. The Plaintiff had licensed others to enjoy the Ultraman works in other countries except Japan and Thailand in return for benefits, without Defendant No. 2's permission. The Plaintiff must also pay interest of 7.5 percent per annum on this amount from the date the case was filed until all payments were made.

- (5) The Court was requested to stop the Plaintiff from claiming that it was the Ultraman copyright owner in Thailand, and to stop and suspend the Plaintiff from using or granting any rights relating to the Ultraman licenses in Thailand.
- (6) The Court was requested to revoke the Ultraman licenses the Plaintiff and its representative had granted to other parties in Thailand.
- (7) The Court was requested to rule that Defendant No. 2 was a copyright owner of all Ultraman works stated in the complaint in Thailand and other countries around the world except Japan.
- (8) The Plaintiff shall pay Baht 10 million (ten million baht) damages a month, for its infringement and breach of the agreement with Defendants No. 1 and No. 2, from the day Defendants No. 1 and No. 2 submitted their answers and counterclaims, to the day the Plaintiff stops the infringement and breach.
- (9) The Court was requested to rule that the agreement for rights transfer that the Plaintiff and/or Tsuburaya Enterprise Co., Ltd. and/or Tsuburaya Prod. and Enterprise Co., Ltd, as the Plaintiff's business representative, signed with Defendant No. 2 dated 4 March 1976, was a real and valid document and therefore fully enforceable.
- (10) The Court was requested to rule that the Plaintiff's letter issued to Defendant No. 2 dated 23 July 1996 was a real and valid document and therefore enforceable according to the law.

Defendant No. 3 denied the charge filed by the Plaintiff in the criminal case. The Defendant answered and filed a counterclaim in the civil case that the Plaintiff's charges were all false. The Plaintiff was neither an owner of, nor had any copyrights to the literary or artistic works, applied arts, prints, photos, or all kinds of works entitled Ultraman or "Yod Manut", including the Ultraman movie series in Thailand. This is because on 4 March 1976, the Plaintiff by Tsuburaya Enterprise Co., Ltd. (the Plaintiff's business representative in Japan), had signed the Licensing Agreement allowing Defendant No. 2 to solely exercise his rights in relation to the Plaintiff's

Ultraman or "Yod Manut" literary works, artistic works and movies in all territories except Japan for an indefinite period. Defendant No. 2 later on licensed the copyrights in Ultraman or "Yod Manu" to Defendant No. 1, which was legally registered as a juristic person in Thailand, having Defendant No. 3 as its executive director to manage Defendant No. 1 based on business objectives that it had registered. It was therefore legitimate for Defendant No. 3, as Defendant No. 1's representative, to protect Defendant No. 1's rights in the transferred Ultraman or "Yod Manut" works in Thailand. Regarding the Plaintiff's claim that Defendant No. 3 had tricked the Plaintiff into signing the letter dated 23 July 1996, to confirm Defendant No. 2's sole rights in the Ultraman or "Yod Manut" works in Thailand, Defendant No. 3 did not deceive the Plaintiff into doing so. The Plaintiff's letter dated 23 July 1996, in which the Plaintiff confirmed Defendant No. 2's rights in the Ultraman or "Yod Manut" works in Thailand, was written in Japan at the Plaintiff's company. The letter was voluntarily made by the Plaintiff's authorized director, who had thoroughly checked the documents, and understood and acknowledged that Defendant No. 2's rights in the Ultraman or "Yod Manut" works in Thailand were real. The copyrights in Ultraman or "Yod Manut" that Defendant No. 1 received from Defendant No. 2, and that Defendant No. 3, as Defendant No. 1's director, exercised by filing complaints for the arrest of those infringing the Ultraman works in Thailand or by licensing Defendant No. 4 the right to publish coloring books, were the result of the Agreement by which the Plaintiff had transferred copyrights to Defendant No. 2 and the letter in which the Plaintiff had confirmed Defendant No. 2's right. This was not in any manner a copyright infringement or an illegal action intended to make the Plaintiff suffer. Defendant No. 3 would like to confirm Defendant No. 1's legitimate rights in the Ultraman or "Yod Manut" creations. Defendant No. 3, as Defendant No. 1's executive director, had exercised his rights to protect the Ultraman creations in Thailand since the very beginning, including works under the same category; namely, movies named Giant and Jumbo A (Thai title) and Hanuman and the Seven Ultraman (Thai title), with no objections, all of which are based on Defendant No. 1's rights licensed by Defendant No. 2. Defendant No. 1's action through Defendant No. 3 therefore was an exercise of right by Defendant No. 1 through Defendant No. 3, who acted as Defendant No. 1's representative in good faith. Defendant No. 1 was a legal entity that honestly exercised a right it was legally granted. The Court was requested to dismiss the Plaintiff's complaint and order the Plaintiff to compensate Defendant No. 3.

The Central IP & IT Court however refused to accept the counterclaim filed by Defendant No. 3.

Defendant No. 4 denied the charge filed by the Plaintiff in the criminal case. Defendant No. 4 defended itself in the civil case claiming the Plaintiff had no rights to sue it in this case because the Plaintiff was not a creator of the work as claimed thereby. Copyrights of all works belonged to Defendant No. 2 who was a co-creator with a person who was not the Plaintiff. Defendant No. 4 had the right to legally use or benefit from every single creation named in the Plaintiff's suit. Defendant No. 4 acted in good faith to use, reproduce or do anything with the creations named in the Plaintiff's lawsuit. The Plaintiff had no legal status to file this suit, because it was not a juristic entity under law. The Plaintiff's directors, if actually existing, had no legal power. The Plaintiff's Power of Attorney was unlawful. Everything claimed by the Plaintiff was legally committed by Defendant No. 4. The Plaintiff had filed a false lawsuit. The Plaintiff was not an injured person because it did not have rights to the creations. The damages that the Plaintiff requested were unreasonably high, far beyond a real cause and not a result of a direct effect. The Plaintiff therefore exercised its rights in bad faith. The Court was requested to dismiss the case.

The Plaintiff answered Defendant No. 1 and Defendant No. 2's counterclaim that their counterclaim was all false. Defendant No. 2 was not a co-creator of the Ultraman creations with the Plaintiff. Tsuburaya Enterprise Co., Ltd. was not the Plaintiff's business representative. The Plaintiff had never signed any agreement to transfer all rights relating and incidental to the Ultraman works to Defendant No. 2 or any other person. The Plaintiff had never received any benefits in return from Defendant No. 2 or any other persons either. The Agreement dated 4 March 1976, attached to the answer and counterclaim and marked No. 1, was entirely forged. Mr. Noboru Tsuburaya had never made such a document. A signature and a seal in the Agreement did not belong to Mr. Noboru Tsuburaya, either. Upon inspection, the document does not appear to be an assignment agreement. The statement indicated that a right was given for a specific purpose. It did not allow sub-licensing, nor did it mean that when granting such right, the person who did so would no longer have any rights. On the contrary, it means that the grantor shall have a right to act or use the rights by himself,

or to grant the rights to others. Whatever the case, the Plaintiff was always entitled to act or to exercise its rights either by itself or by granting license to others around the world, including Thailand. The statement referred to Ultraman characters under clause 1.1 to clause 1.9 only, and did not include any other Ultraman characters not stated in those clauses. The Plaintiff never acknowledged that Defendant No. 2 had a right to the Ultraman or "Yod Manut" works. The Plaintiff issued the document dated 23 July 1996 because it was duped to falsely believe the material essence. The document therefore had no legal effect. Defendant No. 2 was not related to the creation of all the Ultraman or "Yod Manut" works. All of these works were solely created by the Plaintiff in Japan, and the Plaintiff was the sole person having copyrights over the works. Neither the Plaintiff nor Tsuburaya Enterprise Co., Ltd. had ever signed an agreement transferring rights relating and incidental to all or part of the Ultraman works to Defendant No. 2. The Agreement dated 4 March 1976 was entirely forged in bad faith, since the Plaintiff, Mr. Noboru Tsuburaya or Tsuburaya Enterprise Co., Ltd. had not known before or ever been involved in drafting the document. Mr. Noboru Tsuburaya's signature was forged. The seal was not the Plaintiff's, Mr. Noboru Tsuburaya's or Tsuburaya Enterprise Co., Ltd.'s, either. Tsuburaya Enterprise Co., Ltd. was not the Plaintiff's business representative either, and therefore had no rights to transfer any copyrights or to sign an agreement to grant any rights relating and incidental to all or part of the Ultraman works to Defendant No. 2. The Plaintiff or Tsuburaya Enterprise Co., Ltd. never received any benefits from Defendant No. 2 as stated in the Agreement dated 4 March 1976. Since the Agreement was not made by the Plaintiff or Tsuburaya Enterprise Co., Ltd., all the terms and conditions that granted Defendant No. 2 rights in relation to the Plaintiff's Ultraman works or other works shall have no binding effect on the Plaintiff. Defendant No. 2 did not release the Ultraman works for commercial purpose as specified in the Agreement dated 4 March 1976 in Thailand, nor did he reserve the rights as claimed thereby. In addition, the notification of copyright information of Defendant No. 2 was done through a submission of false information. The notification was made in 1995 after the Copyright Act, B.E 2537 (1994) became effective, and such notification had no legal effect because Defendant No. 2 was not a creator of Ultraman, nor was he a transferee of the Ultraman copyrights legally owned by the Plaintiff. In late 1995, Ultracom Inc. was informed by Video Square Co., Ltd. that Defendant No. 2 had claimed that he had a right over the Ultraman works. Ultracom Inc. therefore issued a letter asking

that Defendant No. 2 desist from such claims or be prosecuted on both criminal and civil offense counts. In mid 1996, Defendant No. 2 and Defendant No. 3 traveled to meet the Plaintiff in Japan. Defendant No. 2 deceived the Plaintiff that Defendant No. 2 had signed an agreement dated 4 March 1976 with Mr. Noboru Tsuburaya, Tsuburaya Enterprise Co., Ltd.'s chairman at that time. Defendant No. 2 also claimed that he had tried to sell video tapes of Ultraman and Jumbo A movies to Video Square Co., Ltd. in Thailand, but Video Square Co., Ltd. did not believe that Defendant No. 2 had the rights to distribute the videos of these two movies because it knew that Ultracom Inc. in the USA had the rights to distribute the Ultraman works including the videos of these two movies. Defendant No. 2 suffered considerable humiliation from this incident and his reputation was also compromised. Defendant No. 2 therefore asked to sign an agreement with the Plaintiff in order to be a distributor of Ultraman works in five South East Asian countries; namely, Thailand, Laos PDR, Cambodia, Vietnam and Myanmar. Defendant No. 2 said he would no longer claim his rights based on the Agreement dated 4 March 1976. Defendant No. 2 also requested that the Plaintiff issue a letter to him to show that he still had a right to the Ultraman works so that he could show it to persons in the business related to video in Thailand to restore his reputation. Defendant No. 2 insisted that after the Plaintiff issued the letter, he would sign an agreement to become an Ultraman distributor with the Plaintiff based on conditions that he would discuss with the Plaintiff later. Such an unfounded claim however managed to convince the Plaintiff's board into believing him and misunderstanding that the Agreement dated 4 March 1976 was real, including that Defendant No. 2 intended to enter into a distributorship agreement at a later date. The Plaintiff's chairman was allowed to issue the Plaintiff's letter dated 23 July 1996 to help restore Defendant No. 2's reputation as requested by him. In order to resolve all protests that could occur as a result of Defendant No. 2's claim of his rights under the Agreement dated 4 March 1976, the Plaintiff needed to include statements in its letter dated 23 July 1996 to cause Defendant No. 2 to acknowledge the rights based on the agreements that had been signed and remained effective between Ultracom Inc. and other licensees including the Plaintiff, so as to prevent further disputes in relation to the rights in Ultraman. However, Defendant No. 2 later refused to enter into a distributorship agreement with the Plaintiff as previously agreed. Instead, Defendant No. 2 showed the Agreement dated 4 March 1976 and a letter dated 23 July 1996 to a third party, and claimed that he had a right to the

Ultraman works. The Plaintiff only learned later that as a matter of fact, Defendant No. 2 had no intention whatsoever to sign a distributorship agreement with the Plaintiff. On the contrary, he merely intended to deceive the Plaintiff into issuing the letter dated 23 July 1996 for him so that he could use it to claim that he had such right with the third party for his own benefit. When Defendant No. 2 refused to sign a distributorship agreement in December 1996, the Plaintiff's representative came to meet Defendant No. 2 in Bangkok to discuss the signing of the distributorship agreement. That was when the Plaintiff checked Mr. Noboru Tsuburaya's signature that Defendant No. 2 claimed he had signed in the agreement dated 4 March 1976. The signature was also sent to signature verification experts, who subsequently confirmed that the signature in the document was not signed by Mr. Noboru Tsuburaya. The Plaintiff issued a letter dated 29 January 1997 denying the validity of the letter and the Plaintiff's binding commitment under the letter. As a result, the Plaintiff's letter dated 23 July 1996 was a result of a misunderstanding of a juristic act's material essence due to Defendant No. 2's fraudulent action, which, without such, the Plaintiff would not have issued the said letter dated 23 July 1976 to him. As a result, the Plaintiff's intention expressed in the letter dated 23 July 1976 was null and void and shall have no legal effect. Defendants No. 1 and No. 2's claim concerning the letter dated 23 July 1976 was not true in accordance with the existing facts. The closure of Ultracom Inc. in the USA had nothing to do with Defendant No. 2's claim to his right in the Ultraman works under the Agreement dated 4 March 1976 either, but was instead a result of Ultracom Inc.'s operating losses. In short, the closure was not a result of an agreement made under the Plaintiff's letter dated 23 July 1996, as claimed by Defendant No. 2. Regardless of the case, the Agreement dated 4 March 1976 and the Plaintiff's letter issued to Defendant No. 2 dated 23 July 1996 had ceased to be in effect and had no binding effect on the Plaintiff. This is because prior to filing this lawsuit, the Plaintiff notified the cause of such invalidity and unbinding effect of these two documents to the Defendants. The Plaintiff had also terminated the binding effect, if any, under the two documents to Defendant No. 2. Moreover, Defendant No. 2, with Defendants No. 1 and No. 3 and other persons, jointly exploited the benefits not only of the works specified in the Agreement dated 4 March 1976, but also the works in many Ultraman creations that the Plaintiff produced prior to 4 March 1976 and not included in a list of movies as stated in the agreement, as well as new works the Plaintiff created after 4 March 1976 which made

the Plaintiff the sole copyright owner without anything to do with the Agreement dated 4 March 1979. Defendant No. 2, in collaboration with Defendants No. 1 and No. 3, had reproduced or adapted these works without the Plaintiff's permission. This included; for example, "Father of Ultra", "Ultraman 80", "Ultraman Great", "Ultraman Powered", "Ultraman Leo", "Ultraman Zearth" and "Ultraman Tiga". To release or seek interest from the Plaintiff's works in this manner showed an intention to violate the Plaintiff's copyrights, because Defendant No. 2 as well as Defendants No. 1 and No. 3 were well aware that Defendant No. 2 had no rights to the Plaintiff's works. Defendant No. 2 therefore cannot claim against the Plaintiff, who was the real copyright owner, that his actions were the exercise of rights available by the operation of the agreement or a law in order to protect Defendant No. 1 and Defendant No. 3 from being liable for such a copyright infringement. This was because the Agreement dated 4 March 1976 did not bind the Plaintiff. The Plaintiff was therefore fully entitled to seek commercial benefits from the Ultraman works and other related creations, or to license others to use the rights in Japan and other countries around the world including Thailand as a legal copyright owner. The Plaintiff also had a right to protect itself from having its copyrights in the Ultraman creations violated. As a result, the licensing of Ultraman works to others, or the filing of a lawsuit to stop copyright infringements and to demand damages are the lawful exercise of rights. Defendants No. 1 and No. 2 have no right to file a counterclaim. The counterclaim shall therefore be dismissed.

The Central IP & IT Court ruled to dismiss the Plaintiff's claims both in the civil and criminal cases. The Plaintiff was asked to pay a total of Baht 12 million to Defendant No. 2 together with a 7.5 percent interest rate per annum from the date the counterclaim was filed to the date all payment is made to Defendant No. 2. The Plaintiff was ordered to stop violating Defendant No. 2's rights according to the document as per Exhibit Lor 10 or Jor 23, and refrain from doing anything that would be deemed a violation of Defendant No. 2's rights. The Plaintiff was asked to pay all Court costs on behalf of the four Defendants. The lawyer's fee for Defendants No. 1 and No. 2 was set at Baht 500,000 each. The lawyer's fee for Defendant No. 3 and Defendant No. 4 was Baht 400,000 and Baht 200,000 respectively.

The Plaintiff and the four Defendants appealed to the Supreme Court.

The Intellectual Property and International Trade Division (the "**IP & IT Division**") of the Supreme Court conducted the meeting and found the following. The Plaintiff produced evidence to show that it had been incorporated under the laws of Japan. It is a juristic person under the category of a limited company, with the objectives to produce, create, and distribute cinema works. The Plaintiff authorized Mr. Dheerapol Suwanprateep or Mr. Suparat Allapach to file the case on its behalf, wherein Mr. Koichi Takano signed the Power of Attorney. When it was first incorporated, the Plaintiff's name was Tsuburaya Tokuki Production Co., Ltd. Its name was changed in 1968. In 1964, the Plaintiff, led by Mr. Eiji Tsuburaya, started creating Ultra Q. The work, which was featured on television, was a fictional work concerning huge monsters and four main heroes. The production was completed in December 1965. The movies consisted of 28 series and were first broadcasted on television in January 1966. The Plaintiff then started creating Ultraman, which by way of creation was similar to Ultra Q. Mr. Narita Toru was designated as the designer of such character. The character was first named Bemler, which was later changed to Red Man which is more human-like and finally to Ultraman; the details are contained in a book relating the history of the Ultraman character, as per Exhibit Jor 18, pages 194 and 195, and a book about Mr. Narita Toru's designs, Exhibit Jor 69, which featured a collection of Mr. Toru's Ultraman designs. The concept of the Ultraman movie was to create a main character that would protect humans from huge monsters. The members of the team who invented Ultraman and are still alive today consist of Mr. Kasuho Mitsuta, Mr. Akira Tsuburaya, Mr. Toshihiro Iijima, Mr. Shozo Uehara, Mr. Kazuo Sagawa and Mr. Umemoto Masaaki. Mr. Akira Tsuburaya was an assistant director of Ultra Q and Ultraman. He oversaw equipment, costumes and schedules for the actors and the shooting team of "Ultra Q", "Ultraman" and "Ultra Seven". In "Return of Ultra", he oversaw marketing activities and also planned "Ultraman Leo's" creation. Furthermore, he was involved in the creation of other Ultraman works; namely, "Ultraman Ace", "Ultraman Taro", "The Ultraman" and "Ultraman 80". The Plaintiff was creating "Ultra Q" and "Ultraman" and signed an agreement with television stations. It also created other Ultraman series; namely, "Ultra Seven", "Return of Ultra", "Ultraman Ace", "Ultraman Taro", "Ultraman Leo", "the Ultraman", "Ultraman 80", "Ultraman Tiga", "Ultraman Zearth" and "Jamborg Ace". Tsuburaya Enterprise Co., Ltd. was a representative to license Ultraman series in Japan. From

1966-1996, Tokyo Broadcasting System (TBS) station of Japan allowed United Artists, a US film distribution firm, to distribute the "Ultra Q", and "Ultraman" series. "Jamborg Ace and Giant", and "Hanuman and the Six Ultraman Brothers" were movies co-created by Defendant No. 1 and the Plaintiff. The Plaintiff, however, never allowed anyone to create the 11 characters in "Hanuman and the Eleven Ultraman" (Thai title) before. All Ultraman works therefore belong to the Plaintiff and have been copyrighted works under the laws of Japan since 1966. In May 1996, Defendants No. 2 and No. 3 traveled to meet the Plaintiff in Tokyo, Japan. They claimed to the Plaintiff that Defendant No. 2 had earlier made an agreement with Mr. Noboru Tsuburaya, the former chairman of the Plaintiff and Tsuburaya Enterprise Co., Ltd. That agreement was dated 4 March 1976, as per Exhibit Jor 23 (identical to Exhibit Lor 10). Defendant No. 2 further claimed that he had been assigned the rights in all Ultraman works around the world except Japan. This led to a discussion in which Defendant No. 2 asked to become the Plaintiff's distributor in five countries. The Plaintiff was also asked to issue a letter to Defendant No. 2 to restore his reputation. The Plaintiff issued such letter dated 23 July 1996, or Exhibit Jor 25, based on an understanding that an agreement to appoint Defendant No. 2 as its distributor in five countries would be signed at a later date. However, no such agreement was signed because Defendant No. 2 insisted that he would exercise his rights according to the 1976 Agreement. Defendant No. 2's actions eventually made the Plaintiff realize that it had been deceived. The Plaintiff sent Mr. Jimmy Ugawa to discuss the issue with Defendant No. 2 in October 1996, but no agreement was reached. Mr. Koichi Takano and Mr. Jimmy Ugawa met with Defendant No. 2 in Bangkok again. Defendant No. 2 remained adamant that the Plaintiff must compensate him if the 1976 Agreement was to be terminated, which was why Defendant No. 2 and the Plaintiff could not have come to an agreement. The Plaintiff checked the 1976 Agreement and found several suspicious issues. These included the fact that the names of the movies were not the officially designated names, no numbers of series episodes was stated, and there were no details concerning terms or dates of payment, as well as there being no such name as Tsuburaya Prod. Enterprise Co., Ltd. In addition, a signature contained in the document was sent to experts in Japan for verification. The experts were subsequently of the opinion that Mr. Noboru Tsuburaya's signature in this Agreement differed from those in other documents also submitted for verification purposes at the same time. The details are shown in a report of the experts' opinion dated 21 March 1997 and its

translation, as per Exhibits Jor 27 and Jor 28. The Plaintiff then asked its lawyer to nullify its letter issued to restore Defendant No. 2's reputation and went on to file a charge against Defendant No. 2 and other defendants who had violated the Plaintiff's Ultraman copyrights. The Plaintiff's lawyer notified Defendant No. 2 that it had issued a letter, as per Exhibit Jor 25, for Defendant No. 2 out of a misconception and moved to invalidate it. Moreover, the signature in the 1976 Agreement was not the genuine signature of Mr. Noboru Tsuburaya either, and therefore should have no binding effect on the Plaintiff. Defendant No. 2 was asked to suspend the rights to Ultraman in Thailand and other countries. In September 1997, the Plaintiff became aware of the existence of coloring books, as per Exhibit Jor 31 to Exhibit Jor 42, indicating that Defendant No. 4 was a publisher/distributor and that Defendant No. 1 was a copyright owner. In December 1997, coloring books, as per Exhibits Jor 48 and Exhibit Jor 49, were found at Defendant No. 4's company. Defendant No. 4 and Defendant No. 1 were indicated as the publisher and a copyright owner, respectively. The Plaintiff also found the same type of coloring books as per Exhibits Jor 51 to Jor 53 at various stores in Bangkok. In early 1999, Ultraman videos, Exhibit No. Jor 54, and snacks carrying the Ultraman image as in Exhibit Jor 55, which stated that Defendant No. 1 was a copyright owner, were also found. In addition, Ultraman images were found printed on dolls and ready-to-eat rice soup products as per Exhibits Jor 56 and Jor 60. Defendant No. 2 and Defendant No. 3 also filed a charge with the police against infringers of Ultraman copyrights, claiming that Defendant No. 2 owned the Ultraman copyrights according to the 1976 Agreement. The police took legal action for Defendant No. 2 in several cases. Some copyright infringers even compromised with Defendant No. 2 by agreeing to pay compensation before Defendant No. 2 agreed to withdraw the case. The Plaintiff viewed that Defendant No. 2 and Defendant No. 3 did so despite the fact that they were well aware that they had filed a false statement with the police that Defendant No. 2 was a copyright owner and had sole rights in the Ultraman copyrighted works even though Defendant No. 2 owned nothing, thereby causing damages to the Plaintiff. Defendant No. 2 and Defendant No. 3 had filed similar complaints with the police on several occasions. All of these violations on the part of the Defendants had made the Plaintiff suffer damages; for example, a loss of opportunity to serve those wishing to be licensees wherein the Plaintiff was obliged to spend approximately Baht 10 million explaining the situation to its clients in Malaysia, the Philippines, Hong Kong SAR and Taiwan.

Meanwhile, the printing of disputed coloring books accounted for Baht 50 million in damages. An additional five items constituting damages included (1) Baht 10 million from Defendant No. 2's use of Ultraman characters in 1996 and 1997 to publishing the coloring books at Baht 25 a copy; (2) Baht 20 million from Defendant No. 2's production of videos featuring "Ultra Seven", "Ultraman Ace" and "Ultraman Taro" without the Plaintiff's permission and allowing CP 7-Eleven (Thailand) Co., Ltd. to produce products featuring the Ultraman character for sales promotion activities; (3) Baht 10 million for the Plaintiff's expenses in hiring lawyers to explain to its overseas official licensees by way of issuing a letter and advertising in newspapers in Thailand; (4) Baht 10 million for Defendant No. 2's false statements filed with the police to arrest infringers who sold Ultraman products and from whom Defendant No. 2 sought compensation even though he had no rights to do so; (5) Baht 5 million a month for violations by Defendant No. 1 to Defendant No. 3 of the Plaintiff's copyrights, from the date the case was filed until the violation is suspended.

Defendant No. 1 and Defendant No. 2 presented evidence showing that Defendant No. 2 had graduated from Bangkok Technical College majoring in motion picture production. He had working experience in the motion picture section of the Advertising Division of the Government Savings Bank. He also worked as a freelance photographer for several magazines. Defendant No. 2 worked with Mr. Hem Vechakorn in the past. In 1962, he went to Japan to study advertising and movie production at Toho Co., Ltd, the largest Japanese film production company, on a scholarship granted by Mitsui Bank. In Japan, he had the opportunity to train with renowned movie directors such as Mr. Akira Kurosawa, Mr. Hichiro Handa, Mr. Eiji Tsuburaya and Mr. Hiroshi Nagasaki. At that time, no one had traveled to study the making of movies there before. Although he was a trainee, Defendant No. 2 was present in his capacity as a company executive. Therefore, during lunches, he sat at the same table as his Japanese counterparts. In relation to the creation of Ultraman work, Defendant No. 2 suggested to Mr. Eiji Tsuburaya that Godzilla movies tended to focus on themes of destruction. As Godzilla could not be a hero, he suggested there should be a character that would prevail against the monster. Mr. Eiji Tsuburaya agreed that a larger than life human character should be created to battle the evil monster. He also had an idea to create a movie featuring a man wearing a suit, who would be a hero to children. The hero's character was to be kind, smiling and

charming. Since Mr. Eiji Tsuburaya did not have a natural ability for designing characters, Defendant No. 2 compiled ideas for the would-be character from various sources, for example, the garuda, as in Exhibit Lor 239, and three other books in Exhibit Lor 254. Ultraman, which was initially called Bemler, was based on the garuda. The name was later changed to Redman. Mr. Eiji Tsuburaya saw a picture of the warrior character and felt unsatisfied, since it looked rather menacing. Eventually, the Ultraman character that Mr. Eiji Tsuburaya chose to create was similar to Buddha images from the Sukhothai period, while Ultraman's gestures were based on Superman. Defendant No. 2 proposed several gestures from the Buddha images inspired by Lord Buddha's battles with Satan. Mr. Eiji Tsuburaya compiled a scrapbook and Defendant No. 2 was considered part of Ultraman's creation, since he suggested the concept from the very beginning. When Mr. Eiji Tsuburaya came up with an idea, he would order his team to produce some designs. The team, as employees, had to comply with whatever Mr. Eiji Tsuburaya ordered. Although the team drafted and created designs or wrote scripts, they were not the copyright owners. After returning to Thailand, Defendant No. 2 co-produced movies with the Plaintiff named Hanuman and the Seven Ultraman (Thai title), as well as Giant and Jumbo A. To produce Giant and Jumbo A movie, Defendant No. 2 hired the Plaintiff to be a producer for US\$ 45,000. Before shooting commenced, on 16 June 1973, Mr. Noboru Tsuburaya persuaded a Taiwanese party to produce a film with Defendant No. 2 for no more than US\$ 50,000 wherein the Taiwanese party paid US\$ 30,000 and Defendant No. 2 paid US\$ 20,000. Defendant No. 2 agreed and the Agreement dated 5 October 1973, as per Exhibit Lor 177, was signed. Aside from the production cost of US\$ 45,000, the Plaintiff also charged approximately Yen 5 million for films and other materials plus another Yen 1.6 million for special effects. The Agreement, Exhibit Lor 177, was signed at Mr. Noboru Tsuburaya's house on 5 October 1973 in the presence of actors, newspaper and TV reporters. The Agreement required the producer to submit an original film by 20 December 1973. The 26 November 1973 Agreement, Exhibit Jor 83, which the Plaintiff had claimed was the agreement of the same movie, was not correct. This was because when Defendant No. 2 signed Agreement as per Exhibit Lor 177, he also signed Exhibit Jor 83, albeit without an intention to enforce it since Mr. Noboru Tsuburaya stated that it would be used for the benefit of the Plaintiff's company. Defendant No. 2, in favor of Mr. Noboru Tsuburaya, signed to allow Giant and Jumbo A to be shown at the Coliseum Theater.

The Plaintiff also published details about the movie in magazines in Japan. The movie was also converted into laser disc format. Later, Mr. Noboru Tsuburaya sold the movie to Hulong Film Co., Ltd. in Taiwan without Defendant No. 2's knowledge. Defendant No. 2 only learned later that Mr. Noboru Tsuburaya had already sold the movie according to an agreement dated 14 October 1974, as per Exhibit Lor 29, for US\$ 30,000. The negative copy of the movie was kept at Tsuburaya Enterprise Co., Ltd. because Defendant No. 2 asked that the copy be kept there due to the hot weather conditions in Thailand. This is why Mr. Noboru Tsuburaya was able to sell the negative copy of the movie to Hulong Film Co., Ltd. By the approval of Tsuburaya Enterprise Co., Ltd., Mr. Noboru Tsuburaya sold the movie before asking Defendant No. 2 to sign the agreement. Defendant No. 2, in learning that the movie had already been sold, agreed to sign the agreement anyway. Approximately one to two years after the Lor 29 Agreement had been signed, Mr. Lee Shen Loong of Hulong Film Co., Ltd. traveled to Bangkok and asked Defendant No. 2 to issue a letter confirming that Defendant No. 2 was the copyright owner and that Defendant No. 2 would grant the rights to Mr. Lee so that he could show the motion picture throughout the world. Defendant No. 2 refused and said he wished to remain with what Mr. Noboru Tsuburaya had agreed to. In short, with regard to Giant and Jumbo A (Thai title), Mr. Noboru Tsuburaya received a total of US\$ 75,000. Of this, he received US\$ 45,000 from Defendant No. 2 and the remaining US\$ 30,000 from Hulong Film Co., Ltd. With regard to "Hanuman and the Seven Ultraman" (Thai title), an agreement was made on 3 September 1974 as seen in Exhibit Lor 103, which was identical to a movie under clause 1.2 of the Agreement, Exhibit Lor 10. The Plaintiff was the one who typed this agreement, Exhibit Lor 103. The signature in the agreement belonged to Mr. Noboru Tsuburaya which he also initialed with the abbreviation N.T. Defendant No. 2 signed both the long and short name. The name "Chaiyo Film" appears in the agreement, as per Exhibit Lor 103, which was Defendant No. 2's trade name. The Agreement, as per Exhibit Lor 103, also indicated US\$ 90,000 as the cost of production. The agreement was not a licensing agreement but the Plaintiff used the word "licensee" and "licensor" which at that time was not understood and considered as a licensing agreement. A careful study of the agreement showed there was no indication of a licensing fee. The production of Hanuman and the Seven Ultraman (Thai title) was photographed, as seen in photos of Exhibit Lor 93, Exhibit Lor 112, Exhibit Lor 129, Exhibit Lor 164 and Exhibit Lor 285, respectively. The leading

actors in the movie were Pawana Chanajit and Yodchai Meksuwan. "Hanuman and the Seven Ultraman" (Thai title) was shown at Chalerm Krung Theatre, as seen in photos, Exhibit Lor 54 and Lor 97. In addition, an advertisement was published in the *Thai Rath* newspaper and a poster was also produced in Exhibit Lor 74 and Lor 75. The movie was also screened by the censorship board, details of which are in a permit allowing the film to be shown at entertainment venues dated 29 November 1974, Exhibit Lor 287. Mr. Noboru Tsuburaya distributed this movie in a form of videos, details of which are in videotape evidence as in Exhibit Lor 98, an interview as in Exhibit Lor 99, a laser disc as in Exhibit Lor 100, and a translation of the movie's title, actors' names and the production team as in Exhibit Lor 101. In addition, the movie was released in various prints as seen in Exhibit Lor 19, Lor 191, Lor 101, Lor 102 and Lor 106. The Agreement in Exhibit Jor 160 and signatures of both Mr. Noboru Tsuburaya and Defendant No. 2 were both genuine. The Agreement was made in duplicate as seen in Exhibit Lor 103 and Exhibit Jor 160 for use as duplicate copies. When the Plaintiff sent Mr. Noboru Tsuburaya's signature samples for verification purpose in Japan and Thailand, the Plaintiff failed to submit the signature in the Agreement, Exhibit Jor 160 for such verification. Defendant No. 2 invested US\$ 120,000 to produce "Hanuman and the Seven Ultraman" and another US\$ 30,000 for the production of a negative film of this movie. When the production was completed, Defendant No. 2 received the negative film at the Plaintiff's company before keeping it at Tokyo Lab Co., Ltd., Japan, due to the hot and humid weather conditions in Thailand. The reason Defendant No. 2 decided not to keep the film at Tsuburaya Enterprise Co., Ltd.'s premises was because he was afraid that Mr. Noboru Tsuburaya would sell the movie to others again as in the case of the Giant and Jumbo A movie. Sir Run Run Shaw, the owner of Shaw Brothers Co., Ltd., approached with an intention to buy "Hanuman and the Seven Ultraman" (Thai title) and said that money would be paid when the negative film was delivered to Shaw Brothers Co., Ltd. in Hong Kong SAR. Defendant No. 2 then called Mr. Noboru Tsuburaya and told him about this. Mr. Noboru asked to borrow US\$ 120,000 for use in the Plaintiff's business for a year. Defendant No. 2 agreed and w Tokyo Lab Co., Ltd. to deliver the film to Mr. Noboru Tsuburaya, who would take it to Hong Kong SAR. The licensing agreement dated 19 February 1975, Exhibit Lor 40, therefore was signed by Mr. Noboru Tsuburaya in Japanese on behalf of Defendant No. 2. "Hanuman and the Seven Ultraman" was shown at Chalerm Krung Theatre and at other theaters in

Bangkok and the provinces and earned more than Baht 7 million at the box office. Defendant No. 2 earned more than Baht 4 million profit from the Giant and Jumbo A and another Baht 5 million profit from Hanuman and the Seven Ultraman. The agreement signed with Shaw Brothers Co., Ltd. was only seven years. At the end of the seven-year period, the negative of the film must be returned to Defendant No. 2, who may show it again. Defendant No. 2 knew nothing about the licensing agreement between Chaiyo Film Co., Ltd. and Southern Co., Ltd. dated 19 February 1975, Exhibit Lor 137, because Defendant No. 2 was not involved. Defendant No. 2 received a copy of the agreement from Mr. Noboru Tsuburaya together with a copy of the licensing agreement dated 19 February 1975. Mr. Noboru Tsuburaya told Defendant No. 2 that he had sold "Hanuman and the Seven Ultraman" to a buyer in Taiwan for US\$ 80,000. Mr. Mazaru Nichiyama of Tokyo Lab Co., Ltd, who kept the film negative, told Defendant No. 1 on the phone that Mr. Noboru Tsuburaya had asked him to make another copy of the film to sell in Taiwan, which earned Mr. Noboru US\$ 80,000. Defendant No. 2 learned of this only when Mr. Noboru Tsuburaya showed him a copy of the Agreement, Exhibit Lor 137. This however was not the same agreement Mr. Noboru Tsuburaya had signed with a licensee in Taiwan. It was instead the agreement Mr. Noboru Tsuburaya had made himself and showed it to Defendant No. 2 by mistake. Mr. Noboru Tsuburaya received US\$ 80,000 from licensing the "Hanuman and the Seven Ultraman" (Thai title), but did not return it to Defendant No. 2, who however, chose not to initiate a lawsuit against Mr. Noboru Tsuburaya as a show of gratitude to Mr. Eiji Tsuburaya and the Plaintiff. The Plaintiff also showed Hanuman and the Seven Ultraman in Japan in 1979, which means that the Plaintiff had violated Defendant No. 2's copyright in this movie. While copyright infringement in Japan was considered a serious criminal offense, Defendant No. 2 did not file a charge against the Plaintiff since the Defendant realized that the Plaintiff had a licensing agreement according to the Licensing Agreement dated 4 March 1976, Exhibit Lor 10. In 1984, Mr. Noboru Tsuburaya expanded a 16-mm film featuring "Ultraman Zoffy" into a 35-mm film and showed it in theaters. There were as many as 11 Ultraman, thanks to special effects, and it was later shown as "Hanuman and the Eleven Ultraman". Mr. Noboru Tsuburaya told Defendant No. 2 that he would grant the rights to produce a film to him in return for Defendant No. 2's help where he would charge only US\$ 18,000 for a cost of expanding the film. As a result, there were two licensing agreements made with Southern Co., Ltd. of Taiwan;

namely, Agreement No. 1 dated 19 February 1975, Exhibit Lor 40, totaling US\$ 120,000; and Agreement No. 2 dated 19 February 1975, Exhibit Lor 137, totaling US\$ 80,000. Both agreements contained Mr. Noboru Tsuburaya's signatures but they were different. When the Plaintiff took Mr. Noboru Tsuburaya's signature to check in Japan and to the Scientific Detection Division, Defendant No. 2 could not confirm the validity of the inspected documents. From 1963 to 1965, the Plaintiff's business was not so bad. When Mr. Eiji Tsuburaya died in January 1970, Toho Co., Ltd. sold off its shares in the company. Mr. Hajime became the next chairman for a little longer than a year before he passed away. Mr. Noboru Tsuburaya then became the chairman instead. At that time, the Plaintiff was nearly bankrupt as a result of huge debts accumulated after it had bought expensive equipment while incomes were not as good as before, since fewer people now watched Ultraman. Mr. Noboru Tsuburaya came to meet Defendant No. 2 in Thailand and asked Defendant No. 2 to help him or he may have to sell his company. Defendant No. 2 asked Mr. Chuchee Panyasang to buy three Ultraman movies while Defendant No. 2 bought two TV series. Mr. Noboru Tsuburaya received a total of US\$ 400,000. Due to Defendant No. 2's financial assistance, the Plaintiff was able to save the business in 1976. Mr. Noboru Tsuburaya, appreciating what Defendant No. 2 had done for him, agreed to sign a licensing agreement dated 4 March 1976, Exhibit Lor 10, in return for Defendant No. 2's kindness where he gave all the rights in all Ultraman works plus in the Giant and Jumbo A to Defendant No. 2. At that time, there were only six Ultraman characters. The Agreement stated that new Ultraman characters, if created, would belong to Defendant No. 2. The rights were given to Defendant No. 2 at Mr. Noboru Tsuburaya's office in Tokyo, Japan. Mr. Noboru Tsuburaya told Defendant No. 2 that all the rights were transferred and this was not a licensing. Ultraman movies were called differently. For example, "Ultraman 1" and "Ultra Q" were the same movie while "Ultraman Seven" referred to "Ultra Seven". Mr. Noboru Tsuburaya was the party who typed the Agreement, Exhibit Lor 10. As a result, the spellings of movie names and the amounts of series might be slightly inaccurate, but it was thoroughly understood which movie was referred to. In 1976, obtaining a copyright in a movie was hardly valuable and the "Hanuman and the 11 Ultraman" could hardly be exploited. The Ultraman series became popular once again in 1994 when the copyright law was amended to render harsher penalties. Defendant No. 2 started to seriously exercise his rights under the Agreement, Exhibit Lor 10, against copyright

infringers. Those arrested by the police led by Defendant No. 2 usually compromised at the police station and agreed to compensate Defendant No. 2. Later on, Video Square Co., Ltd. violated Defendant No. 2's copyright by reproducing Ultraman in a form of video. Defendant No. 2 asked his lawyer to issue a notice to Video Square Co., Ltd. to stop this violation. In May 1996, Defendant No. 2 went to file a lawsuit against Ultracom Inc. in the USA. On the way, while stopping in Japan, he got a phone call from Mr. Jimmy Ugawa. Mr. Jimmy Ugawa and Mr. Saito came to meet Defendant No. 2 who showed Mr. Jimmy Ugawa the Agreement, Exhibit Lor 10. Mr. Jimmy Ugawa did not protest after seeing it, but said he would inform the Plaintiff and advise the Plaintiff to issue an apology letter to prevent Defendant No. 2 from suing the Plaintiff and other licensees of the Plaintiff such as Ultracom Inc. Defendant No. 2 met Mr. Jimmy Ugawa several times after that. There was a discussion that the Plaintiff would issue Defendant No. 2 a letter of apology. The Plaintiff eventually did as seen in its letter dated 23 July 1996, Exhibit Lor 12, and its translation, Exhibit Lor 13. The letter confirmed Defendant No. 2's rights according to Exhibit Lor 10 and was signed by Mr. Kazuo Tsuburaya, the Plaintiff's chairman, on 23 July 1996. During the negotiation with the Plaintiff through Mr. Jimmy Ugawa, Defendant No. 2 allowed Defendant No. 3 who knew English well to sit at the discussion. As soon as Defendant No. 2 received an apology letter from the Plaintiff, he kept his promise by no longer suing anyone. But the Plaintiff failed to keep its promise by continuing to license the rights to Bandai Co., Ltd. in Japan that also covered Thailand. The Plaintiff also licensed its rights to Dorda Industrial Co., Ltd. of the USA, this too covered Thailand. In addition, Ultracom Inc. which was the Plaintiff's subsidiary, also licensed the rights to two companies in Malaysia and Little Giant Co., Ltd. in Taiwan. These rights again covered Thailand. Defendant No. 2, realizing that the Plaintiff failed to comply with the letter of apology, Exhibit Lor 12, filed a criminal complaint against BKC Trading Co., Ltd. which was Bandai's subsidiary and the Plaintiff's customer. The Plaintiff was dissatisfied and therefore filed a suit in this case. The negotiation between the Plaintiff and Defendant No. 2 according to the letter of apology, Exhibit Lor 12, was not fruitful because the Plaintiff failed to comply with the agreement. The Plaintiff's evidence showing that Defendant No. 2 had deceived the Plaintiff to issue such a letter therefore was false. Defendant No. 4 had initially contacted Defendant No. 2 for a right to use the Ultraman works and Defendant No. 2 had already allowed Defendant No. 4 to do so. Defendant No. 2 was a founder of

Defendant No. 1 and an authorized director who shall act on its behalf, and no one had protested Defendant No. 2's rights. Meanwhile, the reason Defendant No. 2 had not revealed his collaboration in the Ultraman creation with the Plaintiff since the beginning was because he felt that Thai people might not appreciate the work by their Thai counterparts. The disclosure therefore might not be good for the business. This was also the period before the Copyright Act, B.E 2537 (1994) came into force. At that time, copyright infringers were not afraid of the laws. With regard to damages, Defendant No. 1 and Defendant No. 2 had co-invested with TIGA Co., Ltd. so that TIGA Co., Ltd. would license the rights to those interested in Ultraman works. As a result, the damages were a combination of a loss of opportunity to license the Ultraman works to CP 7-Eleven Co., Ltd., Thanthana Co., Ltd., BKY Co., Ltd. and Liu Family Limited Partnership multiplied by three, on an assumption that if the public believed that Defendant No. 2 had the rights, no fewer than three times the number of applicants would file for a license to the Ultraman works from Defendant No. 2. In addition, there were damages resulting from a failure to do business that related to Ultraman; namely, licensing fees from videotapes, TV, cable TV and other licensing fees in other countries except Japan and Thailand totaling Baht 231 million; damages from a reputation loss of Baht 40 million; damages incurred from the fact that the Plaintiff had illegally licensed the Ultraman works by allowing others to seek benefit from the works in Thailand totaling Baht 365 million; damages incurred from the fact that the Plaintiff had illegally licensed the Ultraman works by allowing others to seek benefit from the works in other countries except Japan and Thailand totaling Baht 1.095 billion and damages resulting from the violation and breach of agreement totaling Baht 10 million a month, to be calculated until the Plaintiff stopped violating and breaching the agreement.

Defendant No. 3 presented evidence that he had not committed any offense as alleged by the Plaintiff. Defendant No. 3 admitted all along that Defendant No. 2 was a co-creator of Ultraman works with the Plaintiff and he was licensed by the Plaintiff in a written agreement. Defendant No. 2 exercised his right in criminal cases against copyright infringers for a long time without objections from anyone. Defendant No. 3 was authorized by Defendant No. 2 to file a charge against the accused. During a negotiation with the Plaintiff to issue an apology letter, Defendant No. 3 went with Defendant No. 2 as he could speak English well. Mr. Jimmy Ugawa was the party

who had arranged to issue the apology letter while the person who signed it was Mr. Kazuo Tsuburaya, who signed the letter at the Plaintiff's company in Tokyo, Japan. It was therefore impossible for Defendant No. 2 and Defendant No. 3 to deceive the Plaintiff to do so. Defendant No. 3 did not file a false statement with police officers either; he did so based on Defendant No. 2's rights. Defendant No. 3 was not involved in allowing Defendant No. 4 to publish coloring books. It was a case where Defendant No. 2 had allowed Defendant No. 4 to exercise his rights.

Defendant No. 4 presented evidence to show that it is a corporate entity under a limited company category. When Defendant No. 4 was sued, Mr. Ittipol Boonchindasab was its authorized director who may act on behalf of Defendant No. 4. At present, Mrs. Chuleeporn Pitilertpaiboon is its authorized director. Defendant No. 4 is a supplier of newspapers, and once requested a license in the Ultraman works from Defendant No. 2 according to the Licensing Agreement dated 6 March 1996, Exhibit Lor 226. Defendant No. 4's lawyer, having checked the document, believed that Defendant No. 2 had rights to the Ultraman works based on various documents and agreements shown by Defendant No. 2. In addition, no other party had ever claimed rights to the Ultraman works. Defendant No. 4 did publish coloring books featuring Ultraman characters, but similar books were reproduced by several other people, which made it impossible to confirm that the books being seized as an exhibit belonged to Defendant No. 4 or were published by someone else. Most of the damages demanded by the Plaintiff were not related to the Plaintiff's own claim that Defendant No. 4 had violated his rights. Defendant No. 4 therefore shall not be liable to pay damages.

Having considered the issue, the Court hereby makes the following decisions. With regard to the Plaintiff's appeal, the Central IT & IP Court accepted the appeal, with the exception of the part in which the Plaintiff asked the Court to punish Defendant No. 2 and Defendant No. 3 for filing a false statement according to section 137 of the Penal Code. The Court refused to accept the appeal in such part, since no appeal can be made based on a question of fact. It is therefore settled according to the Central IP & IT Court's decision that Defendant No. 2 and Defendant No. 3 did not commit a crime on this charge. As a result, at this stage, the first issue that the Court must decide is based on the counter-appeal filed by the four Defendants, as to whether or

not the Plaintiff's appeal was duly submitted by an authorized attorney permitted to act on behalf of the Plaintiff, as it was signed by Mr. Manas Kamnerd-ngarm, who appealed, composed and typed such document. Based on the facts in the case file, Mr. Manas submitted the Plaintiff's appeal in which he signed as the appellant, composer, and typist together with a letter to appoint an attorney signed by Mr. Koichi Takano, the Plaintiff's authorized representative. In the letter, Mr. Manas was named as the Plaintiff's lawyer in this case. He was also authorized to conduct proceedings on behalf of the Plaintiff and to exercise the Plaintiff's rights to appeal. A notary public in Tokyo, Japan, also certified Mr. Koichi Takano's signature in the letter of appointment. Furthermore, a Japanese official at the Ministry of Foreign Affairs also certified the notary public's signature in another certificate. In addition, there was a certificate issued by the Thai Embassy in Tokyo, Japan, certifying the signature of the official of the Japanese Ministry of Foreign Affairs. Mr. Manas himself verbally confirmed before the Central IP & IT Court that the Plaintiff had complied with all the procedures under the Civil Procedure Code with regard to documents executed overseas and the four Defendants did not oppose otherwise. As a result, it may be concluded that the Plaintiff duly appointed and authorized Mr. Manas as specified in the letter to appoint the attorney. Since the appointment letter specified that Mr. Manas was to exercise his right to appeal on behalf of the Plaintiff, he was therefore empowered to sign as the appellant, composer and typist. The Central IP & IT Court's order to accept the Plaintiff's appeal therefore is valid.

The next issue that the Court must decide on is whether or not the Central IP & IT Court's order to accept an appeal made by Defendant No. 3 and Defendant No. 4 is valid. In this regard, Defendant No. 3 submitted testimony and a counterclaim with Defendant No. 1 and Defendant No. 2, but the Central IP & IT Court only accepted the counterclaim of Defendant No. 1 and Defendant No. 2. The Court rejected Defendant No. 3's counterclaim and also dismissed the Plaintiff's complaints both in the civil and criminal cases. Defendant No. 3 and Defendant No. 4 therefore won the case against the Plaintiff in the Central IP & IT Court. Since Defendant No. 3 and Defendant No. 4 had no interest in the counterclaim of Defendant No. 1 and Defendant No. 2, Defendant No. 3 and Defendant No. 4 therefore had no interest in appealing against the Central IP & IT Court's decision either. Moreover, the appeal of Defendant No. 3 and Defendant No. 4, when combined with the appeal of Defendant

No. 1 and Defendant No. 2, consisted of only four clauses as follows. In clause 2.2, Defendant No. 3 and Defendant No. 4 appealed that they agreed with the Central IP & IT Court in that the disputed agreement (Exhibit Lor 10) was genuine. In clause 2.4, Defendant No. 3 and Defendant No. 4 appealed that they agreed with the Central IP & IT Court that dismissed the Plaintiff's complaint with regard to offenses in contravention of the Copyright Act. In clause 2.5, Defendant No. 3 and Defendant No. 4 appealed that they agreed with the Central IP & IT Court's decision, which ruled that filing a false statement with competent officers was an offense according to section 137 of the Penal Code. In clause 2.6, Defendant No. 3 and Defendant No. 4 appealed that they agreed with the Central IP & IT Court's decision that dismissed the Plaintiff's complaint in the civil case. In their appeal, Defendant No. 3 and Defendant No. 4 did not ask the Plaintiff to be liable to Defendant No. 3 and Defendant No. 4 beyond the extent the Central IP & IT Court stated in its judgment. As a result, since their appeal is not in protest against the Central IP & IT Court's decision, it is not considered a valid appeal according to the Act on the Establishment of and Procedure for Intellectual Property and International Trade Court, B.E 2539 (1996), section 38, in conjunction with the Civil Procedure Code, section 223, and the Criminal Procedure Code, section 193. The Central IP & IT Court's acceptance of the appeal of Defendant No. 3 and Defendant No. 4 is therefore not valid. The IP & IT Division of the Supreme Court therefore decides not to accept the appeal of Defendant No. 3 and Defendant No. 4.

Regarding the next issue that must be decided based on the appeal of the Plaintiff and the appeal of Defendant No. 1 and Defendant No. 2, an initial fact both the Plaintiff and the four Defendants did not oppose is that the Plaintiff, which was a Japanese juristic person with a domicile in Japan, is a creator of Ultraman or "Yod Manut" movies and applied arts, which were distributed for the first time in Japan in 1966 and at subsequent dates, also in Japan. The Plaintiff therefore is an owner of the Ultraman copyrights as filed in the suit, and is protected by the Thai laws, because Thailand and Japan are members of the same international convention on copyright protection. When the dispute took place, the copyrights of the works remained under protection. The first question that the Court must decide, based on the appeal filed by Defendant No. 1 and Defendant No. 2, is whether or not Defendant No. 2 collaborated with the Plaintiff in initially creating the Ultraman character. The Plaintiff stated that it alone

was the person who first created the Ultraman character in 1964 when he assigned Mr. Narita Toru to draw and develop the character from the drawings. Ultraman's face was inspired by Japan's Bodhisattva statute named Miroku, located at the Koriuji Temple in Tokyo. This was later made into a character and a TV movie series, of which a total of 28 series were produced. Production was completed in December 1965. The movie series was shown on Japanese television as from January 1966. Defendant No. 1 and Defendant No. 2 testified that Defendant No. 2 had taken part in the creation process of Ultraman, as he suggested the idea to Mr. Eiji Tsuburaya, the Plaintiff's founder, whom he was close to. Defendant No. 2 suggested that Mr. Tsuburaya create a very large human character that would battle Godzilla and other monster characters. Later on, Defendant No. 2 suggested that this character adopt the face of the Lord Buddha, so that it would appear kind and gentle. Ultraman's facial structure that Mr. Eiji Tsuburaya asked to be created was inspired by Buddha images of the Sukhothai period in Thai history, while Ultraman's movements, as suggested by Mr. Eiji Tsuburaya, were based on Superman's gestures and on Buddha images in various postures as suggested by Defendant No. 2. These included a standing posture, which looked like Superman standing, and an intervening posture, which looked like Ultraman emitting a powerful ray. Meanwhile, the name "Ultraman" was derived from the word "Ottoman" as suggested by Defendant No. 2, which referred to traditional Turkish warriors in steel armor. When the concept was finalized, Mr. Eiji Tsuburaya asked his team, who were his employees, to work on the idea. The Court therefore has the following opinions. According to section 4 of the Act to Protect Literary Works and Artistic Works, B.E 2474 (1931), which was enforced at the time the Plaintiff was creating Ultraman, a writer "shall include a musical composer and creator of artistic work such as a painter, sculptor, architect, etc." Section 10 provides that a writer shall have sole rights to authorize others to turn his/her literary work, scientific work or artistic work into motion picture form for public entertainment. As a result, when an artistic work or a movie is created, participation or collaboration in creating an artistic work or a movie is an essence for a creator to acquire copyrights. In other words, copyright protects an expression of thought in one way or another, but it does not protect an idea. An issue in this case therefore is whether or not Defendant No. 2 did indeed collaborate by expressing his thoughts in the creation of Ultraman as described in the lawsuit. In this regard, Mr. Koichi Takano, the Plaintiff's managing director, and Mr. Kazuho Mitsuta testified that the Plaintiff produced advertising

movies and TV programs as well as selling the movies it made. There were several steps involved in the production of a movie or a program, starting from planning a design to editing Ultraman's designs, naming characters, plotting a story, writing a screenplay and directing the movie. Altogether, there were 10 departments involved in the process. The following persons testified to the Court for the Plaintiff to support other witnesses and documents. Such persons consisted of Mr. Koichi Takano, director of several Ultraman series; Mr. Kazuho Mitsuta, the Plaintiff's director; Mr. Toshihiro Iijima, director of Ultraman and Ultra Q; Mr. Akira Tsuburaya, assistant director of Ultraman and Ultra Q; Mr. Kazuo Sakawa, special effects director of Ultraman; Mr. Shozo Uehara, screenwriter of Ultraman and Ultra Q; and Mr. Minoru Nakano, who was responsible for optical work in Ultraman and Ultra Q. This may be concluded as follows. The Plaintiff, by Mr. Eiji Tsuburaya, was the founder of the Plaintiff's company and also the creator of Ultraman, which he created subsequently from Ultra Q. This was shown on Japanese television on 17 July 1966. Mr. Shozo Uehara, testified that he had personally seen Mr. Narita Toru drawing Ultraman himself. Defendant No. 2 admitted in his testimony that the creation was executed by various teams working for the Plaintiff. All the Plaintiff's witnesses confirmed that they had never seen Defendant No. 2 involved in the creation process when the firm started producing Ultra Q or other works. While each movie or each series required considerable sums of money to make, Defendant No. 1 and Defendant No. 2 still failed to show to the Court's satisfaction that the Plaintiff by Mr. Eiji Tsuburaya and Defendant No. 2 had agreed to co-produce Ultraman whatsoever. What Defendant No. 1 and Defendant No. 2 claimed was only that Defendant No. 2, who was very close to Mr. Eiji Tsuburaya, had been involved in the creation of Ultraman by suggesting an idea to Mr. Eiji Tsuburaya that he should create a large human character to battle with Godzilla and other monster characters. Defendant No. 2 also recommended various facial expressions for the character, including the one inspired by Buddha images from the Sukhothai period, so that the character would look gentle and kind. He also recommended various postures based on Buddha images, such as the standing posture so that the character would look like Superman, and the intervening posture for the character to emit its powerful light. All of these were ideas recommended solely on the basis of a close friend. It is not clear either whether Mr. Eiji Tsuburaya actually used Defendant No. 2's idea in his Ultraman creation or not. Defendant No. 2's claim that Ultraman came from the word "Ottoman," which

referred to Turkish warriors in steel armor, as he suggested, was not sufficiently convincing either, because neither the letters or the pronunciation of these two words are particularly similar with each other. "Ultraman" in itself means a human being who has superior powers to ordinary people. Therefore, the claim made by Defendant No. 1 and Defendant No. 2 is not admissible. In addition, on 27 November 1997, Defendant No. 2 testified to an inquiry officer of the Economic Crime Investigation Division in a case he filed against copyright infringers who sold merchandise bearing the Ultraman logo in a statement recorded in four case files, as per Exhibit Jor 119, Jor 120, Jor 122 and Jor 123, that the Plaintiff had made a movie using an imaginary character entitled "Ultraman and Monsters". In this regard, a giant puppet was constructed, so that the movie could be shot. The same character was also incorporated as part of various merchandise items; for example, cartoon books and so on. The character was also printed on T-shirts for sale in Japan in 1971. This testimony corresponded with evidence produced by the Plaintiff. However, Defendant No. 2 did not say how he had collaborated in the creation of Ultraman. Defendant No. 2 did say that he was not involved in the team that developed Ultraman, because he had a more important role than a draftsman. The Court, however, is of the opinion that the Plaintiff started creating Ultraman in 1964 before completing it in 1965. Defendant No. 2 went to study advertising which also included movie production in 1962, and worked as a trainee at Toho Co., Ltd. The Court therefore believes that when Ultraman was first created, Defendant No. 2 was merely a student or a trainee there. Defendant No. 2's testimony about his role is therefore unconvincing. Defendant No. 2's claim that he did not disclose his joint invention with the Plaintiff in creating Ultraman from the beginning because he was afraid doing so would have affected his sales, since Thai consumers did not like buying products made by other Thais is not convincing either. Based on the reasons described above, it is not admissible that Defendant No. 2 invested his energy, or collaborated, or took part in creating Ultraman. As a result, Defendant No. 2's claim that he jointly created Ultraman with the Plaintiff since the very beginning is inadmissible. The appeal of Defendant No. 1 and Defendant No. 2 is therefore not valid.

The next issue that must be decided according to the Plaintiff's appeal is whether or not the Plaintiff did sign the Licensing Agreement dated 4 March 1976, as per Exhibit Lor 10, for Defendant No. 2. The Plaintiff appeals that the Agreement is fraudulent.

The Court is of the opinion that since this is a dispute over intellectual property, as a result, practices in business where interests from copyrighted work or the Ultraman trademark, such as licensing or a total or partial assignment, are sought after must also be considered as circumstantial evidence to determine the authenticity of the disputed agreement. In addition, signature verification by experts or attempts to identify suspicious clauses or statements in the agreement will also represent additional important evidentiary witnesses to verify the authenticity of the disputed agreement since Mr. Noboru Tsuburaya, who Defendant No. 2 claimed signed the agreement, is deceased.

Regarding the circumstantial evidence in this case as testified by the Plaintiff, in May 1996, one year after Mr. Noboru Tsuburaya died, Defendant No. 2 and Defendant No. 3 took the disputed agreement to the Plaintiff and claimed that it was an agreement that Defendant No. 2 had signed with the Plaintiff by Mr. Noboru Tsuburaya, who was the Plaintiff's chairman at that time. While the Court is convinced that this licensing agreement did allow Defendant No. 2 to seek benefits from Ultraman anywhere in the world including Thailand, except Japan, details of which are in the counterclaim of Defendant No. 1 and Defendant No. 2, who demanded approximately Baht 1.7 million from the Plaintiff as compensation for loss of opportunity he was deprived of, the facts did show that after 4 March 1976, which Defendant No. 2 claimed was the date the disputed agreement was signed, Defendant No. 2 did not exercise his rights by seeking any interest from Ultraman in a manner that could confirm that he was the copyright owner or the exclusive licensee of the disputed agreement whatsoever. Defendant No. 2 never showed the disputed agreement to anyone either. It was not until May 1996, or one year after Mr. Noboru Tsuburaya died and 20 years after the date stated in the disputed agreement, that Defendant No. 2 made a claim to the Plaintiff that such was the agreement that the Plaintiff by Mr. Noboru Tsuburaya had signed with him. The Court finds this behavior very unusual, especially in this business. Commercially speaking, when a party buys a copyrighted work, that party will try to seek profits by either licensing it to others to cover the investment made, or by trying to prevent the work from being outdated. Besides, the fact that the disputed agreement was produced only after Mr. Noboru Tsuburaya died can also imply that this was to circumvent the problem of Mr. Noboru Tsuburaya questioning the authenticity of the document, since he was already deceased. While

Defendant No. 2 testified that after obtaining the copyright license under the disputed agreement, from which he produced a movie entitled "Hanuman and the Eleven Ultraman", the Court also heard from Defendant No. 2's own testimony that in fact, Defendant No. 2 was permitted by the Plaintiff to edit "Ultraman Zoffy" as "Hanuman and the Eleven Ultraman" in 1984, for which Defendant No. 2 paid US\$ 18,000 as compensation or material cost to the Plaintiff with details as per Exhibit Lor 30. This was not an exercise of rights as an assignee or an exclusive licensee under the disputed agreement. If the disputed agreement was made as Defendant No. 2 claimed to be an assignment of copyrights in Ultraman works as specified in the agreement and the works created after the date the agreement was signed as testified by Defendant No. 2, there was no reason why Defendant No. 2 still had to ask for the Plaintiff's permission to use Ultraman in his movie or to pay the Plaintiff in 1984, which was eight years after the date of the disputed agreement. This was in marked contrast to the actions of the Plaintiff. Starting from a period close to 4 March 1976 as stated in the disputed agreement, the Plaintiff and Tsuburaya Enterprise Co., Ltd, the Plaintiff's licensing agent, actively benefited from its Ultraman works. To elaborate, on 28 October 1976, approximately seven months after the date stated in the disputed agreement, the Plaintiff by Tsuburaya Enterprise Co., Ltd allowed Commercial Television in Hong Kong SAR to show Ultra Seven, as stated in clause 1.5 of the disputed agreement, details of which appear in Exhibit Jor 174. Nine years after the date of the disputed agreement, Tsuburaya (USA) Co., Ltd. by Mr. Noboru Tsuburaya licensed Turner Program Services Co., Ltd in the United States of America to become a sole licensee of Ultra Seven, as stated in clause 1.5 of the disputed agreement, worldwide, including Thailand, with an exception only covering certain countries, details of which are in an agreement signed in February 1985, as per Exhibit Lor 139. Seventeen years after the date stated in the disputed agreement, Ultracom Inc., the Plaintiff's distributor agent, allowed Video Square Co., Ltd. in Thailand to produce Ultraman videos for sale here, based on an agreement dated 30 April 1993, Exhibit Lor 81. Seventeen years after the date stated in the disputed agreement, on 10 May 1993, the Plaintiff signed a licensing agreement allowing Character Merchandising (Holdings) Co., Ltd. in Malaysia to serve as a distributor selling Ultraman Kids and The Ultraman home videos in Thailand, details of which appear in Exhibit Lor 69. On 9 August 1993, Unicorn TV Distribution in Hong Kong SAR, which was sub-licensed by the Plaintiff's licensee, allowed Bangkok Broadcasting TV Co., Ltd. to feature an

Ultraman movie in Thailand, details of which appear in Exhibit Lor 155. On 8 June 1994, 18 years after the date of the disputed agreement, Ultracom Inc., the Plaintiff's distributor, allowed Video Square Co., Ltd. in Thailand to produce Jamborg Ace, an Ultraman work under clause 1.9 of the disputed agreement, for release in Thailand, details of which are in Exhibit Lor 84. In addition, aside from seeking benefits from the Ultraman trademark under clause 3.5 of the disputed agreement, the Plaintiff also registered the trademark in Japan. During 1992-1993, Australia's trademark registrar issued a certificate of registration of the Ultraman trademark for goods under classes 3, 7, 8, 9, 11, 14, 18, 21, 24, 25, 26, 28, 30 and 41, details of which are contained in Exhibit Jor 184. On 27 March 1991, the Plaintiff asked to register the Ultraman trademark with the US Patent and Trademark Office, which the registrar accepted and registered on 20 December 1994, details of which are in Exhibit Jor 183. On 20 August 1997, the Plaintiff applied to register the Ultraman trademark and the [Thai] Ultraman trademark in Thailand with the Department of Intellectual Property for goods under classes 16, 19, 25 and 28, details of which appear in the Applications for Registration, Exhibits Lor 140 to Lor 146. Before the Plaintiff sued the Defendant in this case, Defendant No. 2 had never applied for any trademark registration in Thailand. This shows that before the Plaintiff filed this case, Defendant No. 2 did not seek any interest from Ultraman in a manner that confirmed he was the owner of the trademark stated in clause 3.5 of the disputed trademark whatsoever. The Plaintiff's behavior shows that if the Plaintiff by Mr. Noboru Tsuburaya had actually signed the agreement in dispute with Defendant No. 2 on 4 March 1976, the Plaintiff would not have had the temerity to sign so many licensing agreements with so many parties as described above, because this made the Plaintiff breach the disputed agreement as it allowed other parties to use the Ultraman copyright in various countries except in Japan, which were the rights that Defendant No. 2 claimed he obtained from the disputed agreement. Meanwhile, Defendant No. 1 and Defendant No. 2 testified that the Plaintiff agreed to sign the disputed agreement with Defendant No. 2 since prior to that, the Plaintiff was encountering financial difficulty and few people were interested in Ultraman any longer, hence the reason for Mr. Noboru Tsuburaya requesting Defendant No. 2 to help. Defendant No. 2 helped him by recommending Mr. Chuchep Panjasang to purchase movie rights from Mr. Noboru Tsuburaya for US\$ 40,000. Defendant No. 2 also hired Mr. Noboru Tsuburaya to produce two movies – "Giant and Jumbo A" for US\$ 75,000 and "Hanuman and the Seven

Ultraman" for US\$ 120,000. Mr. Noboru Tsuburaya then borrowed another US\$ 120,000 from Defendant No. 2. This was the amount Defendant No. 2 received from selling "Hanuman and the Seven Ultraman" to Shaw Brothers Co., Ltd. in Hong Kong SAR. In addition, Mr. Noboru Tsuburaya also secretly produced a roll of film of this movie and sold it to a Taiwanese firm for another US\$ 80,000. As soon as the Plaintiff's financial condition improved, Mr. Noboru Tsuburaya contacted Defendant No. 2, saying that he appreciated Defendant No. 2's assistance and signed the disputed agreement in return for his help. The Court, however, is of the opinion that Defendant No. 1 and Defendant No. 2's claim that the Plaintiff's financial condition was in trouble prior to signing the disputed agreement and that Mr. Noboru Tsuburaya had to borrow money from Defendant No. 2 is too vague and not supported by any evidence except Defendant No. 2's own testimony. Defendant No. 1 and Defendant No. 2's claim that Defendant No. 2 hired Mr. Noboru Tsuburaya to produce "Giant and Jumbo A" and "Hanuman and the Seven Ultraman" was disputed by the Plaintiff in its testimony that this was not a contract to produce the two movies. On the contrary, the movies were co-produced by the Plaintiff and Defendant No. 2 as seen in an agreement, Exhibit Jor 83 and Jor 22. Later, in 1985, Defendant No. 2 informed the copyright information with the Department of Intellectual Property that these two movies were the movies the Plaintiff and Defendant No. 2 had co-produced, details as per a copy of an application to register copyright information, Exhibit Jor 89 and Jor 90. On 1 August 1997, Defendant No. 2 testified in a criminal investigation where he was an injured party, as seen in Exhibit Jor 118, that Defendant No. 2 and the Plaintiff by Mr. Noboru Tsuburaya had signed an agreement to co-produce "Hanuman and the Seven Ultraman" before making this movie. Defendant No. 1 and Defendant No. 2 claimed that Mr. Noboru Tsuburaya secretly sold the film of this movie to Hu Long Film Co., Ltd. in Taiwan, the details of which appear in an agreement, as per Exhibit Lor 29. Mr. Noboru Tsuburaya owed Defendant No. 2 US\$ 120,000 as a result of the sale of "Hanuman and the Seven Ultraman" to Shaw Brothers Co., Ltd. in Hong Kong SAR, details of which are in Exhibit Lor 40. However, the Exhibit Lor 29 agreement dated 14 October 1974 showed that the seller was not Mr. Noboru Tsuburaya, but Thai Burin Film Co., Ltd., which Defendant No. 2 signed on the firm's behalf. Defendant No. 1 and Defendant No. 2 had no evidence to present to the Court that money had been borrowed between Defendant No. 2 and Mr. Noboru Tsuburaya whatsoever. In addition, while Defendant No. 1 and Defendant No. 2 claimed that Mr.

Noboru Tsuburaya had secretly sold "Hanuman and the Seven Ultraman" to a company in Taiwan, the Court heard from Defendant No. 2's testimony when he answered a cross-examination question posed by the Plaintiff's lawyer that Mr. Noboru Tsuburaya had secretly reproduced "Hanuman and the Seven Ultraman" in 1979, which was several years after the date of the disputed agreement, Exhibit Lor 29. Therefore, the claims of Defendant No. 1 and Defendant No. 2 are hardly credible. In addition, when Defendant No. 2 notified information of the copyrighted work with the Department of Intellectual Property in June 1995, which was a few days after Mr. Noboru Tsuburaya died, he told the Department that he had acquired copyrights in two movies only, namely "Giant and Jumbo A" and "Hanuman and the Seven Ultraman", which he co-produced with Mr. Noboru Tsuburaya in 1973 and 1974, respectively, details of which are contained in an application to register copyright information, as per Exhibit Jor 89 and Jor 90. Defendant No. 2 did not apply to register copyright information in seven other Ultraman movies stated in the disputed agreement whatsoever, even though an application form allowed an applicant to include copyrighted works secured by assignment in clause 6. As a result, what Defendant No. 1 and Defendant No. 2 adduced to the Court is far from convincing.

With regard to the finding of suspicious signs in the document and signature verification as part of witness testimony of the Central IP & IT Court, Mr. Noboru Tsuburaya's signature in the disputed agreement was sent to the Scientific Crime Detection Division of the Royal Thai Police to prove. Mr. Noboru Tsuburaya's signatures in sample documents owned by the Plaintiff in Exhibits Jor 83, Jor 172, Jor 173, Jor 175, Jor 176, Jor 177 and Lor 183 were claimed and submitted by Defendant No. 2 that they were Mr. Noboru Tsuburaya's, especially in Exhibit Jor 177 or Sample No. 7, which was claimed as a signature made in an original document. Mr. Chucheep Panjasang, witness of Defendants No. 1 to No. 3, testified by confirming that the document was a sales agreement of Ultra Seven movie between himself and Tsuburaya Enterprise Co., Ltd. The person who signed the document was Mr. Noboru Tsuburaya. The commander of the Scientific Crime Detection Division later appointed a seven-member document verification committee. The seven, who were experts in document and forgery verification, were Pol. Col. Payap Tanchanpong; Pol. Col. Kijja Suntarot, Pol. Lt. Col. Prachuab Kuankajorn; Pol. Lt. Col. Kamjorn Chuenbamrung; Pol. Maj. Pissanu Fooplum; Pol. Lt. Col. Somchai

Amornsunthornsiri and Pol. Capt. Wasan Prinwichayapakdee. The committee unanimously agreed that the signature in the disputed agreement and Mr. Noboru Tsuburaya's signature in sample documents were different in writing styles, characteristics of letters and their patterns (as seen in figures attached to the report on pages 3-6). The committee concluded that the signatures were not from the same person, details of which are in a report of signature verification, Exhibit Jor 334. This corresponds to an opinion of Mr. Akira Amano, who was chief of Sumei of Japan's Association of Cultural and Scientific Promotion and also the Plaintiff's witness. Mr. Amano examined the signature in the disputed agreement and testified that the signature he had examined was intentionally made while signatures in sample documents were naturally written. In addition, the signature he examined was awkward. The letters, he said, were not unique and they were not lined up in a straight manner. This was contrary to those in the samples where letters were nicely lined. This is corresponding to the signature expert's opinion, Exhibits Jor 27 and Jor 170. The IP & IT Division of the Supreme Court also compared the signatures in question and found distinct differences that looked suspicious. To elaborate, "r" in Mr. Noboru Tsuburaya's sample signatures were in lowercase style. In only some signatures, the tail of letter "y" was extended but not tilted. However, "r" in the signature of the disputed agreement was in lowercase handwriting style. The tail of letter "y" was extended, tailed to the left and back to the right, the way most people write. As a result, the Plaintiff's evidence is very credible and lends a lot of weight. The Court therefore accepts what the Plaintiff showed to the Court that the signature in the disputed agreement is not a genuine signature of Mr. Noboru Tsuburaya.

Aside from the signature verification report, there were several suspicions in the disputed agreement. Starting with the title of the agreement, which is "License Granting Agreement," Defendant No. 2 changed its translation three times. First, during the interrogation of the police inquiry officer, the translation was "an agreement to grant license," details of which are in Exhibit Jor 115 and Jor 123. Second, during the trial, it was translated as the "licensing agreement." Third, during witness testimony, it was translated as "an agreement to grant rights." On each occasion, the meaning of licensing was different. In addition, the agreement agreed to grant copyrights of nine Ultraman movies as in clause 1.1 to clause 1.9, as well as rights in the trademark to Defendant No. 2. This could be considered a transfer of the

Plaintiff's main assets to Defendant No. 2 since the Plaintiff's main business was to produce Ultraman movies and distribute them. The Plaintiff's major sources of income were from licensing Ultraman movies and allowing parties to use Ultraman characters in merchandise. Moreover, Defendant No. 2 cited in court that Mr. Noboru Tsuburaya had agreed to also grant him new Ultraman works that Mr. Tsuburaya might create in the future as he interpreted a "reproduction right" in clause 3.3 of the disputed agreement to include any new creation. This is highly unusual for the Plaintiff to create new Ultraman characters and to give them to Defendant No. 2 with nothing in return and for an indefinite period. There is no reason for an entrepreneur to do something like that. In addition, while an agreement to transfer Ultraman works, which were the Plaintiff's main assets, to Defendant No. 2 was similar to the Defendant acquiring the Plaintiff's business, yet, the disputed agreement contained only one page and it was typed in a compressed manner so there was hardly any space left for signing. In addition, the agreement gave no timeframe nor specified any returns for such transfer of copyrights or licensing. There was no mention of the delivery of films of the nine movies to Defendant No. 2, either, which is also highly unusual for this kind of agreement since it simply lacks details of timeframe and monetary returns, which is the essence of the agreement. Besides, the disputed agreement said nothing indicating that Mr. Noboru Tsuburaya had received consent by shareholders or Toho Co., Ltd., its major shareholder who held more than half of the Plaintiff's company. Mr. Noboru Tsuburaya himself held only 15.5 percent of shares. There were no minutes of the board of directors meeting to support this action, either. In addition, in a commercial agreement of this utmost importance, there was no single witness signing the agreement. Defendant No. 2 did not sign the agreement although he said he was there at the signing. Other suspicions in the agreement include the name of the company in the first paragraph, which was identified as "Tsuburaya Prod. and Enterprise Co., Ltd." The Plaintiff adduced that there was no such company in existence. In addition, "PROD. AND" was added later even though abbreviation is not normally used in a commercial contract. Besides, since Tsuburaya Enterprise was only a licensing agent and not a copyright owner, it had no power to transfer any copyrights.

Other suspicions are in clause 1 of the disputed agreement where spellings of several movie titles are simply wrong. For example, in Clause 1.1, Jumbo A should have been

Jamborg A; in clause 1.5, Ultraman Seven should have been Ultra Seven; in clause 1.7, Return Ultraman should have been Return of Ultra; and in clause 1.3 and clause 1.4, Ultraman 1 and Ultraman 2 were mentioned even though the Plaintiff never named his movies that way.

The number of episodes in several movies was also wrong. For example, Ultra Seven in fact consisted of 49 episodes; Ultraman Ace 52 episodes and Ultraman Taro 53 episodes, respectively. This error would not have occurred if Mr. Noboru Tsuburaya was drafting the disputed agreement himself because he must have remembered the name of the Company he had founded for more than 10 years. In addition, the number of episodes was necessary for calculating the cost of licensing. As a result, Defendant No. 2's testimony that the Japanese may not be good at English and therefore could be wrong, and that because everyone understood which names referred to which movies and correcting them may take too much a time, is not sensible at all. Clause 2 of the disputed agreement, which granted license in all territories except Japan for an unlimited timeframe starting from the date of production of the first negative print, is also suspicious in the sense that it granted the most extended license with a retroactive effect. In this regard, Mr. Chakrit Kuanpot, the Plaintiff's intellectual property law expert, testified that the assignment or the licensing with such a retroactive effect would affect third parties and he had never seen any contract like that before. There is also an issue as to whether or not Defendant No. 2 would also benefit from the Plaintiff's licensing of its works to various parties prior to signing this disputed agreement. In clause 3 Re: Scope of Licensing, normally, only miscellaneous rights of the owner's exclusive rights were specified. Clause 3.1-3.3, clause 3.6 and clause 3.7 mentioned various rights that were licensed, which were the exclusive rights of the copyright owner. Yet, clause 3.4 mentioned copyrights one more time. Mr. Tsuneyuki Morishima, the Plaintiff's witness, testified that the way it was written was highly unusual in terms of rights transfer. When copyright was mentioned, there was no need to mention other rights again because they had already been included in the copyrights. This indeed coincided with what Mr. Chakrit stated that based on legal principles, copyright in clause 3.4 included other rights described under clause 3.1-3.3 and clause 3.5-3.8. That is why it was so strange when other rights were also mentioned because copyright referred to copyright, which was multiple rights, and therefore included other miscellaneous rights that came with it. By mentioning

copyrights again in clause 3.4, this raised a question of how much the person drafting the agreement understood about copyright laws and whether the agreement had been drafted by Mr. Noboru Tsuburaya. Clause 3.5 also mentioned the trademark in the same topic as the copyright owner's exclusive right. The last suspicious point concerned a seal. Mr. Tsuneyuki Morishima, the Plaintiff's witness, testified that Tsuburaya Enterprise Co., Ltd. signed an agreement in two different ways. If it was an English-language contract, the firm would sign the agreement only. If an agreement was in Japanese, the agreement would not be signed but a round seal of its authorized representative and the company's square seal would be affixed side by side instead, as seen in samples of Japanese contracts, Exhibit Jor 163 and Jor 164. Mr. Noboru Tsuburaya had never used his seal in any foreign-language agreement. There was no precedent case for Mr. Noboru Tsuburaya to both affix his round seal and sign a foreign-language contract or an English agreement, either. Based on Mr. Tsuneyuki Morishima's testimony, when Tsuburaya Enterprise Co., Ltd. signed an agreement to produce Hanuman and the Seven Ultraman with Defendant No 2 in English as seen in Exhibits Jor 83, Jor 160, Jor 172-Jor 175, Jor 177, Jor 179 and Jor 183, every copy of the agreement was signed. The fact that the disputed agreement, which was in English, was both signed and affixed with the seal was therefore not the Plaintiff's normal practice.

Defendant No. 1 and Defendant No. 2 further cited that the Plaintiff issued a letter dated 23 July 1996, Exhibit Lor 12 (the same as Exhibit Jor 25) to apologize to Defendant No. 2 and to confirm Defendant No. 2's right according to the disputed agreement dated 4 March 1976. Yet, the Plaintiff cited in response that the letter dated 23 July 1996 was to restore Defendant No. 2's integrity and credibility instead. The fact was in May 1996, Defendant No. 2 and Defendant No. 3 went to Japan to discuss with Mr. Kiyotaka or Jimmy Ugawa, the Plaintiff's witness, who had been designated to negotiate with Defendant No. 2 and Defendant No. 3. In the discussion, Defendant No. 2 asked to become the Plaintiff's Ultraman distributor in Asia where he said he would not claim any rights in the disputed agreement. In this regard, Defendant No. 2 had asked the Plaintiff to issue a letter to restore his integrity and credibility in Thailand since the Defendant was about to sell his rights in two TV home videos, but the potential buyer did not believe in his rights because he had known that Ultracom Inc. was the Plaintiff's distributor. In the negotiation, Defendant No. 3 drew a map of

five countries in Southeast Asia in which Defendant No. 2 wanted to become a distributor, as seen in Exhibit Jor 47. Subsequently, Mr. Kiyotaka Ugawa sent a fax dated 29 May 1996 to Defendant No. 3, Exhibit Jor 187, referring to the discussion in Tokyo and stating that the Plaintiff and Ultracom Inc. would do their best to maintain Defendant No. 2's integrity and credibility in Thailand. Mr. Kiyotaka Ugawa also sent another fax dated 4 June 1996 to Defendant No. 3, Exhibit Jor 188, informing of his three actions to restore Defendant No. 2's reputation in Thailand. This included (1) the Plaintiff and Ultracom Inc. would issue a joint letter to Defendant No. 2 as chairman of Chaiyo Studio Co., Ltd. with a copy sent to Video Square Co., Ltd. to confirm that Defendant No. 2 had rights in certain properties (e.g. the Plaintiff's programs) in Thailand and a few other countries mentioned in the discussion in Tokyo; (2) a new amended agreement resulted from the discussion between the Plaintiff and Chaiyo Studio Co., Ltd. in Tokyo would be prepared; and (3) Chaiyo Studio Co., Ltd. would send a letter to the Plaintiff and Ultracom Inc., indicating that it would respect existing agreements between Ultracom Inc. and other licensees in Thailand. Mr. Kiyotaka Ugawa sent a fax dated 24 July 1996, Exhibit 192, to Ultracom Inc., in which he told Ultracom Inc. that he was drafting an amended distributorship agreement/licensing agreement through which the Plaintiff intended to license his rights in a limited way to Defendant No. 2 in five territories including Thailand. Based on the Plaintiff's evidence, Defendant No. 2 also admitted that he and Defendant No. 3 did meet Mr. Kiyotaka Ugawa on 20 May 1996. While there was indeed a discussion, Defendant No. 2 claimed that the discussion never mentioned the Plaintiff's distributorship, and that Defendant No. 3 talked with Mr. Ugawa in English and Defendant No. 2 could not understand everything since Defendant No. 3 did not translate the discussion to him. This however was conflicting with Defendant No. 3's testimony. Defendant No. 3 stated that he was discussing and translating what was discussed to Defendant No. 2 throughout the discussion. Defendant No. 3 also admitted that his discussion with Mr. Kiyotaka Ugawa was not conclusive as to whether or not the three documents would be made. Details are in a fax, Exhibit Jor 188. Defendant No. 3 also admitted that Mr. Yokitaka Ugawa had sent him a fax, Exhibit Jor 187. This corresponded to what the Plaintiff's witness had stated that Defendant No. 2 came to negotiate a deal where he would like to be the Plaintiff's Ultraman distributor, and he also asked the Plaintiff to issue a letter to restore his integrity and credibility. Based on this, the fact cannot be admissible as Defendant

No. 1 and Defendant No. 2 claimed that the Plaintiff issued a letter dated 23 July 1996, Exhibit Lor 12, to apologize to Defendant No. 2 and to confirm Defendant No. 2's rights according to the disputed agreement dated 4 March 1976. As a result, all suspicious points as seen in circumstantial evidence together with suspicions shown in signature and statements in the agreement as described earlier lend a lot of weight, leading to a reasonable belief that the Plaintiff did not make the licensing agreement dated 4 March 1976, Exhibit Lor 10, with Defendant No. 2. The disputed agreement was entirely forged. Defendant No. 1 and Defendant No. 2 had no rights to seek benefit from the Ultraman works stated under the disputed agreement. The Plaintiff's appeal in this regard is therefore valid.

The next issue under the Plaintiff's appeal that the Court needs to decide is whether or not the four Defendants violated copyrights under the Copyright Act, B.E 2539 (1996) section 27 (1) in conjunction with section 69, paragraph two, and section 31 (1) in conjunction with section 70, paragraph two. The Court is of the opinion that in this case, although the Plaintiff has filed both criminal and civil suits in the same case as there are related facts and related legal issues that must be considered together, criminal prosecution however is still subject to the Act on the Establishment of and Procedure for Intellectual Property and International Trade Court, B.E 2539 (1996), section 26, where the Criminal Procedure Code shall apply *mutatis mutandis*. As a result, when the four Defendants denied that they did anything wrong as alleged, in order to punish the four Defendants according to the Plaintiff's complaint, the Plaintiff must bring enough evidence to prove to the Court beyond a reasonable doubt that the four Defendants did commit an offense under section 227, paragraph two of the Criminal Procedure Code. The Plaintiff described that from 11 September 1996 to 16 December 1997, the four Defendants reproduced and adapted Ultraman pictures as coloring books and published the books for commercial purpose and gave them to Defendant No. 4 to sell with intent to violate the Plaintiff's copyrights. However, the Plaintiff managed to merely prove that during the period, the Plaintiff found coloring books at Defendant No. 1's companies and other book shops, which stated that Defendant No. 1 was the copyright owner and that Defendant No. 1 had granted Defendant No. 4 the right to publish the books. This not only showed that the production, publishing and distributing of the coloring books were openly done, but it also indicated that this took place after 23 July 1996, which was not long after the

Plaintiff issued a letter, Exhibit Lor 12, to Defendant No. 2 (the same as Exhibit Jor 25). In this letter, Exhibit Lor 12, it was clearly seen that the Plaintiff wrote it to show that Defendant No. 2 was the exclusive person who may seek benefit from its assets, which included the Ultraman series and the Jamborg A series. Although the letter did not mean that the Plaintiff had confirmed Defendant No. 2's rights as the Court has earlier ruled, yet, Defendant No. 2 had done business with the Plaintiff in the past with the Plaintiff's permission where he had produced several Ultraman movies featured in Thailand. In addition, prior to and during the period the Plaintiff issued the letter to Defendant No. 2, the two discussed with each other several times about a dispute over the Ultraman copyright. The letter, which was directly sent to Defendant No. 2 while the copyright dispute was not settled and while there was no final court decision regarding who owned the copyright, may make Defendant No. 2 including other defendants who worked with Defendant No. 2 or to whom Defendant No. 2 licensed the rights understand that they too had a right to reproduce and adapt Ultraman and publish it as coloring books for commercial purposes, or that they too had a right to sell and offer to sell the coloring books. In this regard, Defendant No. 2 and Defendant No. 4 adduced that Defendant No. 2 had openly licensed Defendant No. 4 in writing where the agreement clearly determined the rights and duties of both parties, details of which are in the Licensing Agreement, Exhibit Lor 226. The Plaintiff, who opted to exercise its rights to sue the four Defendants in a criminal case, had a duty to adduce evidence in order to prove beyond a reasonable doubt that the four Defendants indeed intended to commit an offense but the Plaintiff could not prove it beyond reasonable doubt. The four Defendants therefore shall benefit from such doubt. With regard to section 26 of the Act on the Establishment of and Procedure for Intellectual Property and International Trade Court, B.E 2539 (1996) in conjunction with the Criminal Procedure Code, section 227, paragraph two, on which the Central IP & IT Court based its decision to dismiss the Plaintiff's complaint with regard to offenses in contravention of the Copyright Act, B.E. 2537 (1994), the IP & IT Division of the Supreme Court agreed with it. Therefore, the Plaintiff's appeal in this regard shall be dismissed. Since it is inadmissible that the four Defendants had committed a crime against the Copyright Act, B.E 2537 (1994), section 27 (1) in conjunction with section 69, paragraph two, and section 31 (1) in conjunction with section 70, paragraph two, as stated in the lawsuit, there is no fine that the four Defendants must pay, either. As a result, the Court cannot order the exhibits to be

returned to the Plaintiff, who is the copyright owner, according to the Copyright Act, B.E 2537 (1994), section 75.

The next issue under the Plaintiff's appeal that needs to be decided concerns the civil case that is closely related to the criminal case. When the Court delivers its decision in a civil case, it must rely on facts stated in a court decision delivered in a criminal case. Yet, a court's ruling on a civil case must be subject to provisions of the laws on civil liability without taking into consideration whether or not the four Defendants have been judged as having committed a criminal offense. The Plaintiff's appeal requests the Court to dismiss the counterclaim filed by Defendant No. 1 and Defendant No. 2. In this regard, the Court has the following opinions. Defendant No. 1 and Defendant No. 2 claimed in this case that Defendant No. 2 was the owner of the Ultraman works, both as a co-creator and an assignee of the rights under the disputed agreement. After that, Defendant No. 2 continued to reap benefits from the Ultraman creations. However, since the fact is that the Plaintiff is the sole copyright owner in the Ultraman works and Defendant No. 2 is not a co-creator and that the disputed agreement is forged document, Defendant No. 1 and Defendant No. 2 shall have no rights to seek any interest from the Ultraman works without permission from the Plaintiff as explained above. Defendant No. 1 and Defendant No. 2 therefore are not injured parties who may claim damages from the Plaintiff. The IP & IT Division of the Supreme Court does not agree with what the Central IP & IT Court has decided so far that Defendant No. 1 and Defendant No. 2's counterclaim shall be enforced. The Plaintiff's appeal in this regard is therefore valid.

The next issue under the Plaintiff's appeal that needs to be decided is whether or not the four Defendants must be liable in civil claim to the Plaintiff for their violation of the Plaintiff's copyrights. The Central IP & IT Court has not yet made any decision on this issue. However, since witnesses testified on the issue and the Plaintiff also appealed it as seen in clause 8.1-8.5 of the Plaintiff's appeal, the IP & IT Division of the Supreme Court deems it appropriate to make a decision on this issue without returning the case file to the Central IP & IT Court. The Plaintiff appeals in clause 8.1, demanding Baht 60 million from the four Defendants for its loss of income resulted from their licensing activities and from devaluing the Plaintiff's copyrighted works. The facts however shows that Defendant No. 4 was merely a publisher of

coloring books and was neither the transferor nor the licensor of the Plaintiff's copyrighted works. The Plaintiff therefore had no rights to demand damages from Defendant No. 4. With regard to Defendant No. 1 to Defendant No. 3's liability, only Mr. Masaaki Umemoto, the Plaintiff's director responsible for administration and accounting, testified vaguely that in 1997, the Plaintiff received approximately 300 million yen worth of licensing fees from the licensing of Ultraman in countries other than Japan. In 1998, this went down to 200 million yen. While he claimed that the income fell by 100 million yen, he did not show that aside from Defendant No. 2 licensing Defendant No. 4 to publish coloring books, who else Defendant No. 1 to Defendant No. 3 had transferred copyrights or licensed the Plaintiff's rights to and what Defendant No. 1 to Defendant No. 3 got in return to convince the Court of the Plaintiff's profit decline. On the contrary, the facts showed instead that the Plaintiff had found several products being on sale and they all violated the Plaintiff's copyrights. This indicates that there are a lot of parties that committed the infringement of Ultraman works of the Plaintiff. Among the infringers included the ones who Defendant No. 2 filed a suit against. This may be a reason that made the Plaintiff's income fell. The Plaintiff's evidence is therefore inadmissible in requiring Defendant No. 1 and Defendant No. 3 to be jointly liable to the Plaintiff by paying him damages. Regarding Defendant No. 2, by allowing Defendant No. 4 to publish Ultraman coloring books, this indeed made the Plaintiff suffer, but the fee in return for such licensing should not have been that high. As a result, the Court deems it appropriate to fix an amount of compensation that Defendant No. 2 shall pay the Plaintiff based on the circumstances of the case at Baht 500,000.

The Plaintiff appeals in clause 8.2, requesting damages as a result of its deprivation of benefit from the publishing of coloring books. The Court is of the opinion that a decision has already been made in the criminal case in this regard that Defendant No. 4 published the books after requesting a license of Ultraman from Defendant No. 2, details are in the agreement to grant license, Exhibit Lor 226. Defendant No. 4 honestly believed that Defendant No. 2 was the owner of Ultraman copyrights and that Defendant No. 4 had a right to publish and sell coloring books since it had been granted the license from Defendant No. 2. Therefore, due to the fact that Defendant No. 4 published the books in which it identified Defendant No. 1's firm, where Defendant No. 2 was an authorized director, as the copyright owner and the person

who granted the license to Defendant No. 4 in publishing for distribution, while Defendant No. 1 and Defendant No. 3, who was one of Defendant No. 1's authorized directors, were not involved in granting Defendant No. 4 the license to exploit the Plaintiff's Ultraman works, Defendant No. 1 and Defendant No. 3 shall not be liable for payment of damages to the Plaintiff in this regard. Concerning Defendant No. 2, who licensed the Plaintiff's Ultraman to Defendant No. 4, since the Court has already determined an amount of damages for the Plaintiff in this case under clause 8.1 of the appeal, the Court cannot require Defendant No. 2 to compensate the Plaintiff in this issue again because it will be repetitive.

Concerning Defendant No. 4, facts described in the criminal case show that Defendant No. 4 published the coloring books based on his understanding that Defendant No. 2 was the licensee and the copyright owner in Ultraman works. The Plaintiff however was not able to show to the Court that Defendant No. 4's understanding that it had a right to publish coloring books was a result of negligence. In addition, the Plaintiff failed to present, either, how much Defendant No. 4 had profited from this transaction. Defendant No. 4 therefore shall not be liable in a civil manner to the Plaintiff as a result of its copyrights violation. The Plaintiff cannot demand any damages from the four Defendants in this respect, either.

The Plaintiff appeals in clause 8.3 demanding Baht 10 million from the Defendant to compensate what it spent to clarify its rights to its licensees. It is admissible from the Plaintiff's evidence which Defendant No. 2 failed to prove otherwise that Defendant No. 2 had designated his lawyer to issue a letter to the Plaintiff's overseas customers, claiming that Defendant No. 2 was the copyright owner in Ultraman works and they [the Plaintiff's customers] shall stop violating his copyrights. Defendant No. 2 also asked the police to arrest distributors of Ultraman products. Some customers of the Plaintiff even asked to terminate the licensing agreement with the Plaintiff. The Plaintiff had to issue a clarifying letter to its customers in Malaysia, the Philippines, Hong Kong SAR and Taiwan. In addition, it had to publish advertisements in newspapers to clarify the fact to the public. The Court is of the opinion that there were indeed expenses incurred from the Plaintiff's clarification to customers and the public as to who owned the copyright in Ultraman after Defendant No. 2 made a claim that he was the copyright owner. As a result, the Court deems that these were necessary

expenses for the Plaintiff to enforce its rights as the copyright owner. The Court has the power to order Defendant No. 2, who violated the Plaintiff's copyrights, to compensate the Plaintiff according to section 64 of the Copyright Act, B.E 2537 (1994). Yet, despite the Plaintiff's demand for Baht 10 million, it had only a receipt and three copies of newspaper advertisements, Exhibit Jor 219, to show that he had paid Baht 106,000 for newspaper advertisements. However, as the Court believes that the Plaintiff also paid an amount to directly issue a letter to its customers, the Court therefore deems it appropriate to require Defendant No. 2 to compensate Baht 200,000 to the Plaintiff.

The Plaintiff further appeals in clause 8.4 asking Baht 20 million for the fact that Defendant No. 2 violated its copyrights by appointing others to be merchandise licensing agents and by allowing others to produce videos for sale. The Plaintiff, in its adducing of evidence which Defendant No. 2 failed to show otherwise, stated that Defendant No. 2 had appointed Right Creative Co., Ltd. as its merchandise licensing agent, details of which are in the letter of appointment, Exhibit Jor 268. Later, CP 7-Eleven (Thailand) Co., Ltd. was allowed to produce products featuring the Ultraman character for sales promotion activities, details of which are in a permission letter, Exhibit Jor 243. TIGA Co., Ltd. was licensed "Ultraman Taro" as evidenced in a permission letter, Exhibits Jor 234 - Jor 236. Rights International (Thailand) Co., Ltd. was allowed to produce "Ultraman Ace" and "Ultraman Seven" videos, as seen in a permission letter, Exhibit Jor 220. These permission letters in fact were a licensing agreement that allowed Defendant No. 2 to earn a fee from the companies based on a proportion of income derived from the sales of licensed Ultraman products throughout the contract term. The initial fee as stated in the contract was around Baht 5.4 million. In addition, Defendant No. 2 also admitted that he had received Baht 2.38 million each from licensing Rights International (Thailand) Co., Ltd. to produce "Ultraman Ace" and "Ultraman Seven" videos. The Court therefore believes that Defendant No. 2 received no less than Baht 5.4 million from licensing others to produce Ultraman merchandise or to make Ultraman videos for distribution purpose and he continued to receive additional fees throughout the contract term. As a result, it is appropriate to demand Defendant No. 2 to compensate Baht 10 million to the Plaintiff.

The Plaintiff appeals in clause 8.5 demanding damages that Defendant No. 2 and Defendant No. 3 asked from Ultraman distributors after they told the police to arrest these retailers. The Court is of the opinion that Defendant No. 3 was only Defendant No. 2's authorized representative when he filed a complaint with the police. Defendant No. 3 acted on behalf of Defendant No. 2, who was the principal. As a result, Defendant No. 3 need not be personally liable. Those that suffered in this case were retailers whom Defendant No. 2 told the police to arrest and who had paid money to Defendant No. 2, and not the Plaintiff. Although Defendant No. 2 had asked these retailers to pay, the Plaintiff's right to sue those violating its copyright did not change. The Plaintiff therefore has no right to demand any damages in this respect from Defendant No. 2 and No. 3.

The Plaintiff also requests damages at the rate of Baht 5 million a month from the date the suit was filed to the day the four Defendants stop violating the Plaintiff's copyrights. In this regard, the Court has already ruled that only Defendant No. 2 must be liable to the Plaintiff by paying damages to it. Defendant No. 2 must be liable to copyright violation, which happened from time to time before the Plaintiff filed this suit. If after the day the suit was filed, Defendant No. 2 continued to violate the Plaintiff's copyright, the Plaintiff can then claim for damages from Defendant No. 2's copyright violation on such occasion. The Court cannot determine a monthly payment of damages starting from the date the suit was filed for the Plaintiff.

The Plaintiff also requested the Court to order the four Defendants to cease doing anything considered violating the Plaintiff's copyrights. This included prohibiting the four Defendants from claiming that they were copyright owners or that they had exclusive right in Ultraman and other characters, and preventing the four Defendants to license or to grant copyrights in Ultraman or other characters to others, starting from the day the Plaintiff filed this suit. This however is a matter for the future. At the time the case is being reviewed, there is no contest of the Plaintiff's rights. As a result, the Plaintiff has no right to ask the Court to enforce the four Defendants as such according to section 26 of the Act on the Establishment of and Procedure for Intellectual Property and International Trade Court, B.E 2539 (1996) in conjunction with section 55 of the Civil Procedure Code.

The Plaintiff also files a motion asking the Court to terminate all agreements that Defendant No. 1 and Defendant No. 2 signed with third parties that were related to Ultraman and other characters, which was violating the Plaintiff's copyrights. Since such a request affects the rights of the third parties who are not litigants in this case, the Court therefore cannot do so as requested according to section 26 of the Act on the Establishment of and Procedure for Intellectual Property and International Trade Court, B.E. 2539 (1996) in conjunction with section 145, paragraph two, of the Civil Procedure Code.

The Plaintiff also files a motion that the Court shall rule that it is the sole copyright owner of Ultraman as specified in the suit while prohibiting Defendant No. 1 and Defendant No. 2 from claiming any rights in the Plaintiff's Ultraman works. In the motion, the Court is requested to rule that the disputed agreement (Licensing Agreement dated 4 March 1976) is a forged document and has no legal effect, and that the four Defendants shall be prohibited from claiming or using the fake document. The Court is also requested to rule that the letter the Plaintiff issued to Defendant No. 2 dated 23 July 1996 is invalid and has no legal effect while prohibiting the four Defendants from claiming their rights or from using the document based on the facts with regard to the Plaintiff's rights and duties in the Ultraman works, the disputed agreement, or the letter that the Plaintiff issued to Defendant No. 2 dated 23 July 1996. As the IP & IT Division of the Supreme Court has already delivered a judgment based on claims, defenses and issues of the case, the Court therefore shall no longer need to make any decision as requested by the Plaintiff.

The Supreme Court hereby orders Defendant No. 2 to pay Baht 10.7 million together with interest of 7.5 percent per annum from the date the suit was filed (16 December 1997) to the day all payment is paid to the Plaintiff. Defendant No. 2 shall also pay all court costs on behalf of the Plaintiff where a lawyer's fee is set at Baht 800,000. The Plaintiff, Defendant No. 1, Defendant No. 3 and Defendant No. 4 shall be responsible for their own costs. The counterclaim filed by Defendant No. 1 and Defendant No. 2 shall be dismissed where each party shall be responsible for its costs. The appeal of Defendant No. 3 and Defendant No. 4 shall be dismissed. Baht 200 appeal fee shall be returned to each of Defendant No. 3 and Defendant No. 4. Other than this, the rest shall be as ruled by the Central IP & IT Court.

Mr. Somsak Netramai

Mr. Suwat Wattanahathai

Mr. Kriengchai Juengchaturapit

Central Intellectual Property and International Trade Court

5 February 2008

The Supreme Court judgment was read to the parties, as per the memorandum on proceedings dated today.

Notification of reading was given.

Mr. Warakom Liengphan